Supreme Court, U.S.
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No. 04-

IN THE

# Supreme Court of the United States

WILLIAM J. BERENS and PHILLIP H. MARTIN, Trustees,

*Petitioners*,

*v.*

CWM and ACM, by PAM, and DHM,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Where a trustee is the legal owner of trust property that he must distribute according to trust terms which require beneficiaries to be of actual, biological descent, does a state court violate the trustee's due process rights under the 14th amendment to the U.S. Constitution by holding that the trustee may not inquire concerning whether the biological fact is present but is instead bound by a parentage status determination made by a foreign court in which the trustee had no opportunity to participate?

2. Where a trustee is the legal owner of trust property that he must distribute according to trust terms which require beneficiaries to be of actual, biological descent, does a state court violate the trustee's due process rights under the 14th amendment to the U.S. Constitution by holding that the trustee may not inquire concerning whether the biological fact is present but is instead bound by an "adjudication" of parentage status under a state parentage act when the trustee was not granted standing under that act to participate in any proceedings thereunder?

## LIST OF PARTIES

Petitioners William J. Berens (as successor to Robert J. Struyk) and Phillip H. Martin are trustees of three trusts: the JHM 1974 Trust, the 1980 JHM Family Trust, and the 1980 SMC Trust. They appear in this litigation in their capacities as trustees.

Respondents CWM and ACM are minors, and appear in this litigation through PAM, their mother. Along with respondent DHM, they claim beneficiary status under the above trusts.

In addition to the above parties who are listed in the caption, the following persons (beneficiaries of the above trusts whose claims to that status are not at issue) were also parties in the proceedings below:

AMP
DDM
JM
DCM
KMR
SMK

By Orders of the Minnesota Court of Appeals filed on June 25, 2003 and July 21, 2003, the parties were directed to use initials or pseudonyms in their filings when referring to the parties to this matter. Accordingly, the initials used in the Minnesota appellate courts are used in this Petition.

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## PETITION FOR A WRIT OF CERTIORARI

William J. Berens and Phillip H. Martin, as trustees of the trusts described in more detail below ("Trustees"), respectfully petition this Court to issue a writ of certiorari to review the decision of the Minnesota Court of Appeals.

## OPINIONS BELOW

The decision of the Minnesota Court of Appeals is reported as *In re Trusteeship of Trust Created Under Trust Agreement Dated Dec. 31, 1974, etc.*, 674 N.W.2d 222 (Minn. App. 2004), and is reproduced in the Appendix to this Petition ("App.") at 1a. The order of the Minnesota Supreme Court denying review is unpublished, and is reproduced at App. 42a. The underlying orders of the district court are unpublished, and are reproduced at App. 20a and 32a.[1]

## JURISDICTION

The decision of the Minnesota Court of Appeals was announced on February 3, 2004. The Trustees' timely-filed petition for review was denied by the Minnesota Supreme Court on April 22, 2004. Judgment on the decision of the Minnesota Court of Appeals was entered on May 3, 2004. (App. 43a-45a). This Court has jurisdiction under 28 U.S.C. § 1257.

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1. The original orders of the district court used the full names of the parties and were therefore filed under seal in that court and in the Minnesota appellate courts. In the reproduction of the district court orders included in the Appendix, initials have been substituted for names and other identifiers, in accordance with the practice directed by the Minnesota Court of Appeals. *See* page ii, *supra*. The substituted initials are indicated by the use of brackets and are consistent with those used in this Petition and in the decision of the Minnesota Court of Appeals. All text other than the substituted identifiers indicated by brackets is reproduced as in the original documents.

## CONSTITUTIONAL PROVISION INVOLVED

United States Constitution amendment XIV § 1 provides, in part, "nor shall any State deprive any person of . . . property, without due process of law. . . ."

## STATEMENT

The questions presented by this case are whether trustees of a trust are denied due process under the Fourteenth Amendment to the U.S. Constitution when a state court holds that even though the trust terms require them to distribute trust property only to persons of actual, biological descent, they may not inquire concerning whether that biological fact is present but are instead bound by a parentage status determination of a court in a foreign jurisdiction in which they had no opportunity to be heard, or by an "adjudication" under a state parentage law that did not allow them any opportunity to participate. These questions arise from a petition brought by the Trustees in the District Court for Hennepin County, Minnesota, to determine whether DHM, CWM and ACM (hereinafter "Claimants") or their respective issue are beneficiaries of three irrevocable trusts (the "Trusts"), which were established before the births of any of the Claimants.

In 1974, and again in 1980, JHM, as settlor, entered into irrevocable trust agreements and transferred various assets to the trustees thereunder, thus creating the JHM 1974 Trust and the 1980 JHM Family Trust, to be administered under their respective irrevocable agreements. Also in 1980, SMC, KWM, and LMS, as settlors, entered into a separate irrevocable trust agreement and transferred assets to the trustees thereof, creating what is here referred to as the 1980 SMC Trust. These are the Trusts involved in this case.

The Trustees may make discretionary distributions of net income and principal from the 1974 Trust and the 1980 SMC Trust to persons who are the "issue" of JHM, as defined in the trust instruments for those trusts. The Trustees may make discretionary distributions of net income and principal from the 1980 JHM Family Trust to persons who are "issue" of the "issue of the first generation" of JHM, as those terms are defined in the trust instrument for that trust. Each trust agreement contains a definition of the term "issue," the essence of which is the same: In the case of the 1974 Trust, the issue of JHM are "persons who are descended from [him] by legitimate birth to [him]." Appellants' Minn. C.A. App. at 99. In the case of the other two trusts, the issue of JHM are his "lineal descendants . . . except illegitimate descendants." *Id.* at 117, 141.

As noted, the Trusts providing benefits to JHM's "issue" are irrevocable and cannot be amended.[2] JHM is living but physically and mentally incapacitated. He has been married and divorced several times. Six children were born during the course of prior marriages before JHM and PAM married in 1979.[3] DHM and CWM were born to PAM in 1983 and 1985, respectively. In 1986, JHM filed a petition for divorce and alleged that the two eldest Claimants were not fathered by him. That petition was later voluntarily dismissed by JHM,

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2. The terms of each of the Trusts provide: "This agreement and the trust created hereunder shall be in all respects irrevocable and neither I . . . nor any other person shall have any power to modify, amend, or revoke the trust hereunder or this agreement in any respect." Appellants' Minn. C. A. App. at 100, 116, and 140.

3. These six children are current beneficiaries of the Trusts and participated in the proceedings below. *See* page ii, *supra*. They are filing their own Petition for a Writ of Certiorari with this Court.

and he and PAM continued to be married. PAM gave birth to ACM in 1987. In an uncontested Florida divorce proceeding between JHM and PAM in 1991, the two divorced, and JHM stipulated to child support obligations with respect to Claimants. The Trustees were not parties to any of the divorce proceedings; the disposition of the property of the Trusts was not at issue or adjudicated in the divorce proceedings; and no factual finding was made in those proceedings regarding the actual biological relationship between JHM and Claimants.

In December of 1997, the Trustees received credible information that Claimants were not JHM's issue. The Trustees consulted with independent counsel regarding their fiduciary duties in light of this information, and, having been advised that there was a need to make further inquiry, engaged in an investigation. This inquiry produced evidence that PAM had admitted that Claimants were conceived by men other than JHM, that Claimants had current parent-child relationships with their true biological fathers, and that PAM purposefully concealed these facts expressly to obtain (and keep) potentially enormous trust distributions.[4]

The Trustees then filed a petition in the Hennepin County District Court pursuant to Minnesota Statutes Section 501B.16 for instructions to determine the proper beneficiaries

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4. In addition to several millions of dollars of family funds that have gone directly or indirectly to Claimants' benefit based on the belief that the Claimants were JHM's biological children, each of the Claimants has already received in trust for his benefit property valued in excess of $15 million. Appellants' Minn. C.A. App. at 68-69; 73-86; Resp. Trustees' Minn. C.A. App. at 107-125. The collective value of the Trusts here at issue is over $900 million.

of the Trusts.[5] Claimants and PAM appeared in opposition. For the purpose of motions for summary adjudication, *counsel for Claimants and PAM stipulated that, although* Claimants were born to PAM during her marriage to JHM, Claimants in fact "are not the biological children" of JHM. Appellants' Minn. C.A. App. at 18-19.

In two orders, the district court interpreted the trust instruments and held that the beneficiaries of the Trusts included only "persons who are biological descendants of [JHM] or descendants of [JHM] through legal adoption." App. 29a, 40a. The court determined that, since adoption was not a factor here, the youngest three children should not be treated as beneficiaries unless they provided results of DNA testing establishing that they were JHM's biological descendants. App. 22a, 29a.

Claimants appealed. In an opinion addressing what it accurately described as an issue of first impression in Minnesota, the court of appeals reversed. Although it left undisturbed the district court's determination that, by the Trusts' terms, only biological (or adopted) descendants of JHM could be beneficiaries, it held that the Trustees were not allowed to seek instructions or determinations concerning whether the Claimants met that biological requirement for distribution of the Trust property because the Trustees could

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5. Minnesota Statutes Section 501B.16 authorizes a trustee of an express trust to

> petition the district court for an order: . . . (3) to determine the persons having an interest in . . . the trust and the nature and extent of their interests; (4) to construe, interpret, or reform the terms of a trust . . . or (23) to instruct the trustee, beneficiaries, and any other interested parties in any matter relating to the administration of the trust and the discharge of the trustee's duties.

not "challenge a previous determination of paternity made consistent with applicable parentage laws." App. 2a. The court of appeals held that the 1991 divorce decree amounted to such a determination of parentage under Florida law, App. 12a, which was to be afforded full faith and credit by Minnesota courts, App. 14a-15a. The court of appeals also held that the Trustees were similarly bound under Minnesota law, due to a presumption that a man is the biological father of a child born to his wife, which was irrebuttable here since it had not been challenged by those with standing to do so (only the mother, the child, or the presumed father), and so constituted an "adjudication of paternity" binding on the Trustees, even with regard to the Trust property. App. 15a-18a.

The court of appeals so held despite the argument of the Trustees that, because they did not and could not have participated in any "adjudication" of "parentage" under Florida or Minnesota parentage laws, any such "adjudications" made under those laws were not intended to, and could not, apply to govern their disposition of the Trust property.[6]

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6. *See, e.g.*, Resp. Trustees' Br. (to Ct. of App.) at 28 ("preclusion cannot be applied against a non-party, and the Trustees were not (and would not have had standing to be) parties to JHM's Florida divorce proceedings and had no opportunity or ability to litigate the question of the Claimants' biological ancestry"); *id.* at 39 ("Appellants' claims that the Trustees have no standing and are time-barred under the Parentage Act essentially proves the inapplicability of that Act to trust and probate proceedings"). *See also* Br. of Resp. Beneficiaries AMP, DDM, JM, DCM, KMR, and SMK (to Ct. of App.) at 17 ("Due process requires that those whose rights are to be affected be afforded an opportunity to be heard. *Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532, 542 (1985); *Barton*

(Cont'd)

Since no petition for rehearing is permitted under Minnesota state procedural rules,[7] the Trustees sought review in the Minnesota Supreme Court, arguing that allowing the decision of the court of appeals to stand would deprive them

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(Cont'd)

*Contracting Co., Inc. v. City of Afton*, 268 N.W.2d 712, 716 (Minn. 1978). In fact, there is a presumption in the law that a nonparty is not bound by a judgment, which presumption stems from due process concerns with the right to be heard and have one's day in court. *See Tice v. American Airlines, Inc.*, 162 F.3d 966, 972-73 (7th Cir. 1998), *reh'g and suggestion for reh'g en banc denied, cert. denied*, 527 U.S. 1036 (1999). ("Any determination of the trust made in a proceeding in which a trustee has no standing constitutes a fundamental denial of due process.").

Similar points were made before the district court. *See, e.g.*, Pet. Supp. Mem. in Support of Motion for Partial Summary Judgment at A-5 ("[R]es judicata and preclusion is never applied against a non-party, and of course the Trustees were not (and could not have had standing to be) parties to the divorce proceeding. Plainly, they never had the ability to litigate the question of the Claimants' biological ancestry."); *id.* at A-7 ("Fundamental principles of law and fairness dictate that parties who are strangers to an action cannot be barred from litigating the issues determined in that action."). Unlike the court of appeals, the trial court honored those fundamental principles by ruling that the Trustees were not bound by "adjudications" in which they had not and could not have participated. *E.g.*, June 2002 Order (App. 39a) ("[T]he trustees were not parties to the [Florida] marriage dissolution proceedings. The trustees do not stand in any privity relationship with [JHM]. The trustees are not bound by the findings of the Florida dissolution proceedings under a doctrine of res judicata or collateral estoppel."); February 2003 Order (App. 23a) ("[I]nquiry into . . . the instant facts was not barred by either Florida or Minnesota law.").

7. "No petition for rehearing shall be allowed in the Court of Appeals." Minn. R. Civ. App. P. 140.01.

of due process,[8] and citing cases in which the Minnesota Supreme Court had previously recognized that the due process right to which the Trustees referred was a fundamental, federally guaranteed right.[9] Claimants responded in part by asserting that this Court's decision in *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), had already answered the due process question in their favor. The Minnesota Supreme Court denied the Trustees' petition for review of the decision of the Minnesota Court of Appeals in its Order dated April 22, 2004. App. 42a.

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8. Pet. for Rev. (to S. Ct.) at 4:

> If allowed to stand, [the court of appeals' deprivation of the Trustees' property rights] would be a violation of due process. *See Lustik v. Rankila*, 131 N.W.2d 741, 744 (Minn. 1964) (due process prevents the result of a prior proceeding from binding adversely a litigant who was a stranger to the earlier proceeding and had no opportunity to be heard); *Doerr v. Warner*, 76 N.W.2d 505, 511 (Minn. 1956) ("in the exercise of due process no court, regardless of its jurisdictional structure, may adjudicate directly upon a person's rights without such person being either actually or constructively before the court").

9. *See Lustik v. Rankila*, 131 N.W.2d at 744, citing *Coca Cola Co. v. Pepsi-Cola Co.*, 172 A. 260, 262 (Sup. Ct. Del. 1934), for the proposition stated there that

> [t]he rule that a judgment or decree concludes only parties or privies is based on that fundamental principle that no man can be deprived of his property except by due process of law, a principle which in the United States has been embodied in the Federal Constitution and in the Constitutions of the several States.

(internal citation and quotation omitted); *Doerr v. Warner*, 76 N.W.2d at 511 (noting due process principle as quoted in note 8 above and citing *State of Washington v. United States*, 87 F.2d 421 (9th Cir. 1936), and *Shields v. Barrow*, 17 How. (58 U.S.) 130 (1854)).

## REASONS FOR GRANTING THE PETITION

Parentage acts and trust laws serve fundamentally different purposes and interests. It is unfair — and a violation of due process — to bind trustees (the legal owners of trust property) to a decision made in a parentage matter where the trustees had no opportunity to participate and the trust was not even considered.

Adjudications of "parentage" determine a legal relationship status. They serve important interests concerning such matters as the legal responsibilities for child support. To further such interests, 19 states, including Minnesota, have enacted versions of a Uniform Parentage Act, and all states provide for enforcement of divorce decrees including whatever determinations regarding child support they contain.

All states also provide laws for the orderly devolution of property by instruments such as *inter vivos* trusts. As is true here under Minnesota law, trustees of such trusts are the legal owners of the trust property, and have fiduciary duties to distribute that property only to proper beneficiaries, determined according to the settlors' intent as expressed in the trust instruments. Trustees routinely face questions concerning whether persons are in fact trust beneficiaries. With proper notice to all who might have an interest in the trust property, trustees are entitled to obtain guidance for proper distribution in an *in rem* proceeding that binds the trust and all interested parties. *See, e.g.*, Minn. Stat. §§ 501B.16 to .21 (2002).

The questions presented here arise because of what has become a recurring failure of some state courts to honor the

difference between determinations of the legal status of a parent-child relationship and other determinations which turn not on legal status but on the genetic fact of lineal descent, such as those often involved in the devolution of property by trust (or by will). This failure rises to the level of a due process violation when, as here, a determination of legal "parentage" status is made in a status proceeding in which the legal owner of trust property has no right to be heard or participate, but the result of that status proceeding is nonetheless used to bind the disposition of that owner's property. That due process violation has now risen to the level of one which this Court should address because it has occurred repeatedly in different states and is being justified — incorrectly — by reference to this Court's decision in *Michael H.* For these reasons, this petition for a writ of certiorari should be granted.

## I. The Court Of Appeals Violated The Due Process Guarantee Of The Fourteenth Amendment By Improperly Binding The Trustees To Rulings Made In "Adjudications" In Which They Had No Opportunity To Participate.

### A. The Trustees Possess a Legal Interest in the Trust Res and a Fiduciary Duty to Uphold the Settlors' Intent.

An express trust involves the separation of the legal and beneficial interests in trust property (the *res*), whereby legal ownership of the trust *res* is held by the trustee for the benefit of a beneficiary, who has an equitable interest in the *res* to receive whatever benefits the terms of the trust may confer. *See In re Bush's Trust*, 81 N.W.2d 615, 620 (Minn. 1957); *Farmers State Bank of Fosston v. Sig Ellingson & Co.*, 16

N.W.2d 319, 322 (Minn. 1944). Thus, trustees are the legal owners of the property of the trust with respect to which they are fiduciaries. *See id.*; *First Trust Co. v. Northwestern Mutual Life Ins. Co.*, 283 N.W. 236, 238 (Minn. 1939); *see also* RESTATEMENT (SECOND) OF TRUSTS § 2 (1959).[10]

Trustees in Minnesota and elsewhere are charged with carrying out their fiduciary duties consistent with the original intent of the trust's settlor as set forth in the trust instrument. A court's cardinal purpose in construing a trust instrument is to ascertain and uphold the intent of the settlor. *See In the Matter of the Trust Created Under Agreement with McLaughlin*, 361 N.W.2d 43, 44 (Minn. 1985); *In re Trusts Created by Agreement with Harrington*, 250 N.W.2d 163, 165 (Minn. 1977); *Northwestern Nat. Bank of Minneapolis v. Simons*, 242 N.W.2d 78, 79 (Minn. 1976) (citing *In re Trust Created by Moulton*, 46 N.W.2d 667 (Minn. 1951)). The intent of the settlor is to be ascertained from the language of the trust instrument, which may have a meaning controlled by context and surrounding circumstances. *See First & American Nat. Bank of Duluth v. Higgins*, 293 N.W. 585, 590 (Minn. 1940) (citing *In re Holden's Trust*, 291 N.W. 104, 106 (Minn. 1940)).

Once a settlor's intent has been ascertained, "the trust is to be administered in the manner laid down by him," and "[n]either the court nor a beneficiary or the legislature is competent to violate such intent and to substitute its discretion for that of the trustor [settlor]." *In re Jones' Will*, 22 N.W.2d 633, 634 (Minn. 1946). If, as here, the trust is explicitly made irrevocable and non-amendable, even the

10. The law of Minnesota (the legal situs of the trusts) governs all questions of interpretation and construction of the trust instruments involved here.

settlor cannot thereafter change its terms by his subsequent words or deeds. *See, e.g., Matter of Schroll*, 297 N.W.2d 282, 283-84 (Minn. 1980). The fiduciary duties of a trustee require the trustee to use his or her legal interest in the property of the trust for the benefit of the intended beneficiary or beneficiaries of the trust. A trustee cannot administer a trust for the benefit of persons not intended to be beneficiaries of the trust. *See, e.g., In re Campbell's Trusts*, 258 N.W.2d 856, 860-63 (Minn. 1977).

In this case, the district court made a determination — which the court of appeals did not question — that the terms of the Trusts required beneficiaries to be of actual physical biological descent (in the absence of a legal adoption). *See* App. 29a, 37a-38a, 40a. Thus, by the terms of the Trusts, the Trustees were charged with determining a genetic fact, not a legal relationship.[11] As this Court has acknowledged, "[t]he actions of judges neither create nor sever genetic bonds." *Lehr v. Robertson*, 463 U.S. 248, 261 (1983). Yet the court of appeals deprived the Trustees of the right to dispose of the property of the Trusts in a manner consistent with their fiduciary duty and the settlors' intent, in violation of fundamental due process guarantees.

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11. The Trustees are thus not attacking (and have never attacked) Claimant's legal "parentage." JHM is and remains the "legal father" of the Claimants under the Florida decree and the Minnesota Parentage Act regardless whether they are determined to be eligible beneficiaries under the terms of the Trusts. None of the rights, obligations, or duties now existing between JHM and Claimants (including, among other things, JHM's child support obligations to them) will be affected by a determination that they are not eligible Trust beneficiaries.

**B. The Right to Due Process Under the Fourteenth Amendment Prevents the Court of Appeals from Giving Preclusive Effect For Purposes of Trust Property Distribution to "Adjudications" in Which the Trustees Had No Opportunity to Participate.**

The right to due process embodied in the Fourteenth Amendment is one of the most basic rights in our system of law and justice.

> Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.

*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). "'The fundamental requisite of due process of law is the opportunity to be heard.' . . . This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Id.* at 314 (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)).

The Florida divorce proceedings were the foundation for the court of appeals' holding:

> Here, the 1991 dissolution decree, as entered into judgment in Florida, stated that JHM was the [Claimants'] father and established JHM's child-support obligations. We observe that JHM had previously stipulated to paternity of the two elder

> [Claimants] when he voluntarily dismissed, with prejudice, his 1986 paternity challenge. We conclude that these acts established JHM's paternity of the [Claimants] in Florida as a matter of law.

App. 12a. The court of appeals concluded that the result of the Florida proceedings was entitled to full faith and credit in Minnesota courts, App. 14a-15a, and that under the Minnesota Parentage Act the Trustees did not have standing to challenge that result, App. 15a-16a:

> We conclude that because JHM's biological paternity of the younger children was previously adjudicated under Minnesota law and because the trustees did not meet the standing and timeliness requirements of the Minnesota Parentage Act, their attempt to challenge the younger children's paternity was not authorized by either Minnesota or Florida law.

App. 17a.

This Court has held, however, that

> when the judgment of a state court, ascribing to the judgment of another court the binding force and effect of res judicata, is challenged for want of due process it becomes the duty of this Court to examine the course of procedure in both litigations to ascertain whether the litigant whose rights have thus been adjudicated has been afforded such notice and opportunity to be heard

> as are requisite to the due process which the Constitution prescribes.

*Hansberry v. Lee*, 311 U.S. 32, 40 (1940). "It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process." *Id.*

> A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution and statute of the United States prescribe, and judicial action enforcing it against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments requires.

*Id.* at 40-41 (citations omitted). This Court has long held that

> it is now too well settled to be open to further dispute that the 'full faith and credit' clause and the act of Congress passed pursuant to it do not entitle a judgment in personam to extraterritorial effect if it be made to appear that it was rendered without jurisdiction over the person sought to be bound.

*Baker v. Baker, Eccles, & Company*, 242 U.S. 394, 401 (1917); *see also Hansberry v. Lee*, 311 U.S. at 40-41. The Court in *Baker* added: "This rule became established long before the adoption of the 14th Amendment, as a result of applying fundamental principles of justice and the rules of international law as they existed among the states at the inception of the government." 242 U.S. at 401.

> [T]he effect of the 'due process' clause of [the Fourteenth Amendment was] to establish it as the law for all the states that a judgment rendered against a nonresident who had neither been served with process nor appeared in the suit was devoid of validity within as well as without the territory of the state whose court had rendered it, and to make the assertion of its invalidity a matter of Federal right.

*Id.* at 403. "The fundamental requisite of due process of law in judicial proceedings is the opportunity to be heard. To hold one bound by the judgment who has not had such opportunity is contrary to the first principles of justice." *Id.* (citations omitted).

Here, the Trustees were never parties to the proceedings to which the court of appeals held them bound with regard to the Trust property. The court of appeals itself acknowledged the fact that trustees are not among those enumerated as having standing to "challenge paternity" under the Florida or Minnesota Parentage Acts. *See* App. 12a-13a (citing Fla. Stat. § 742.011); *id.* at 15a (citing Minn. Stat. § 257.57, subd. 1).[12] Nor are trustees among those given standing to participate as parties to divorce proceedings.[13]

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12. With the Trustees having no standing, the "timeliness" provisions of those Acts — requiring those with standing (i.e., the mother, the child, or the presumptive father) to bring any challenge within a specified time (such as within three years of the child's birth) — although noted by the court of appeals, were moot with regard to the Trustees.

13. *See generally, e.g.*, Fla. Stat. §§ 61.001 to .45 (Florida marital dissolution statutes do not contemplate parties other than spouses, except for the appointment of a guardian ad litem to represent a child in some instances).

Inasmuch as the Trustees had no opportunity to be heard in such parentage or divorce proceedings, the results of such proceedings cannot, consistent with the due process principles described above, be used to bind the Trustees concerning factual determinations for the disposition of property in which they hold the legal interest. Yet that is what the court of appeals did here.

### C. Respondents and the Court of Appeals Incorrectly Used this Court's Decision in *Michael H. v. Gerald D.* to Support the Due Process Violation.

In their brief to the Minnesota Supreme Court urging denial of review of the Minnesota Court of Appeals decision, Respondents asserted that this Court had already addressed the due process issues raised by the court of appeals' decision here:

> What petitioners are challenging is the conclusive effect of JHM's acknowledgment of parentage under Florida and Minnesota law. The United States Supreme Court has specifically rejected this argument, holding that even a biological father has no due-process right to challenge paternity. *Michael H. v. Gerald D.*, 491 U.S. 110, 121 (1989). . . . Certainly trustees and siblings have no such right.

Resp. PAM and DHM's Opp. to Pet. for Further Rev. at 3 (footnote omitted).[14]

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14. The court of appeals also cited and quoted *Michael H. v. Gerald D.*, with respect to the plurality's reference to general public policy considerations supporting state parentage statutes: "that . . .

(Cont'd)

In truth, this Court has not yet addressed the Trustees' argument, let alone rejected it. In *Michael H.*, the Court ruled on a challenge to a state statute (Cal. Evid. Code § 621) which denied standing to a non-husband putative father who wished to establish himself as the child's legal father; at issue was the legal status of the parent-child relationship and the mechanism provided by the state for establishing (or challenging) the same. A plurality of this Court determined that the unwed putative father had no interest — specifically, no traditionally protected "liberty" interest — sufficient to support a due process claim.[15] No property

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(Cont'd)
the husband is to be held responsible for the child, and that the integrity of the family unit should not be impugned." *See* App. 18a, quoting 491 U.S. at 119-120. Here, of course, no one disputes that the husband has and will have child support responsibilities (*see* note 11, *supra*), and the "integrity of the family unit" is far beyond salvage: the husband and wife have long since divorced, and the children have stipulated that they "are not the biological children" of the husband (*see* pp. 4-5, *supra*).

15. There was no opinion for the Court in *Michael H.* A plurality determined that the non-husband putative father's challenge to the statute was actually a substantive due process claim, and concluded that neither he nor the child had a constitutionally-protected "liberty" interest in — and thus no due process claim concerning — his unwed "parental" relationship with the child. 491 U.S. at 118-131. The plurality also rejected the child's equal protection claim. *Id.* at 130-132. Justice Stevens, concurring in the judgment, concluded that, although a putative unwed father might have a constitutionally-protected interest, due process was satisfied because Justice Stevens read the state statute as providing the putative father with an opportunity to establish at a hearing that he was an "other person having an interest in the welfare of the child" to whom "reasonable visitation rights" could be awarded in the trial judge's discretion. 491 U.S. at 132-136.

interests held by third parties were at stake. In the present case, no parent-child relationship status is sought to be — or will be — established, disestablished, or otherwise affected. Rather, the sole determinations that must be made are those of genetic fact, and those will determine only whether the Claimants are beneficiaries of the Trusts, eligible to receive distributions of Trust property. Unlike the putative father in *Michael H.*, the Trustees are not challenging their exclusion from a state's determination of the legal status of parentage; they are challenging the use of such a determination, in which they could not participate, to bind the disposition of property of which they are the recognized legal owners. They have a traditionally protected legal interest in that property. They thus have due process rights found not to be present in *Michael H.*, and this case thus presents due process issues the *Michael H.* Court did not purport to reach.

Put another way, in *Michael H.*, the only important interests at stake were parent-child legal relationship status interests. A very divided Court allowed state regulation of those interests by presumption and exclusion over due process and equal protection attacks. *See* note 15, *supra*. Here, traditionally recognized property interests of third parties are being regulated by presumption and exclusion without the opportunity to be heard regarding them. And here, if anything, *Michael H.* ***supports*** a rule that procedural due process principles apply. As one of the several opinions pointed out:

> In a case that has yielded so many opinions as has this one, it is fruitful to begin by emphasizing the common ground shared by a majority of this Court. . . . Five Justices agree that the flaw inhering in a conclusive presumption that

> terminates a constitutionally protected interest without any hearing whatsoever is a *procedural* one. See *infra*, at 153; *post*, at 163 (White, J. dissenting); *ante*, at 132 (Stevens, J. concurring in judgment).

491 U.S. at 136 (Brennan, J., dissenting) (emphasis in original).

## II. If Allowed To Stand, The Rule Followed By The Court Of Appeals Will Jeopardize Property Interests In Countless Irrevocable Trusts Across The Nation.

It is a time-honored practice for settlors to limit the devolution of at least some of their property to "blood relatives," and to do so by instructing their trustees to distribute property only to those who are lineal descendants of a specified person — the donor himself or herself, a relative, or someone else. *See, e.g.*, BOGERT, TRUSTS & TRUSTEES § 182 (2d ed. 1979 & Supp. 2003). It is also the long-established law throughout the nation that such instructions will be scrupulously followed. *See, e.g., Toombs v. Daniels*, 361 N.W.2d 801, 808 (Minn. 1985) ("Centuries of common law case law have established the right of a settlor or testator to dispose of his or her property as he or she deems fit."); BOGERT, *supra*, §§ 181-82. Even otherwise weighty legal presumptions regarding identity of beneficiaries are trumped by contrary donative intent. *See, e.g., In re Trusteeship Under Agreement with Nash*, 122 N.W.2d 104, 106 (Minn. 1963) ("Notwithstanding the statement of policy contained in [the Minnesota statute according equal rights to adopted children], the intention of a testator or settlor continues to govern the disposition of his estate if it can be discovered."); BOGERT, *supra*, § 182; *see also generally* RESTATEMENT (SECOND) OF TRUSTS §§ 126-128 (1959).

This well-established law can be thwarted, however, if status determinations made under parentage acts — with very different purposes than the fulfillment of a trust settlor's intent regarding property distribution — are held binding with regard to property devolution. This rises to the level of a due process problem if such determinations are made in actions where those third parties who own the property and seek the fulfillment of the trust's terms were barred from participating.

Yet that is what happened here, and the court of appeals expressly took comfort in noting that "[o]ther courts have reached the same conclusion after applying state parentage acts to facts similar to those before us," App. 18a, citing as an example the decision of the New Jersey Supreme Court in *In re Trust Created by Agreement Dated Dec. 20, 1961* ("*In re Johnson Trust*"), 765 A.2d 746 (N.J. 2001), *cert. denied*, 534 U.S. 889 (2001). In addition to Minnesota and New Jersey, seventeen other states[16] have enacted versions of a Uniform Parentage Act, and all states provide for the enforcement of divorce decree obligations. Moreover, the high likelihood that the due process violation that occurred here will continue to recur in additional states is exacerbated by the fact that this Court's decision in *Michael H.*, which did not consider this issue, is nonetheless being used to justify the practice, *see In re Johnson Trust*, 765 A.2d at 759 (citing *Michael H.* in rejecting due process claim made by beneficiary of trust), yet this Court has thus far declined

16. Alabama, California, Colorado, Delaware, Hawaii, Illinois, Kansas, Minnesota, Missouri, Montana, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Rhode Island, Texas, Washington, and Wyoming all have adopted some version of a Uniform Parentage Act. *See* UNIF. PARENTAGE ACT, 9B U.L.A. 295, 377 (2001 & Supp. 2004) (showing tables of jurisdictions in which versions of a Uniform Parentage Act have been adopted).

review.[17] Given the clearly recurring nature of the problem and the use of this Court's decision to condone it, review by this Court is now warranted to consider and rectify this violation of fundamental due process principles.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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July 16, 2004

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17. The instant case presents the due process question much more squarely than did the *Johnson Trust* case, where the state court made no finding that the definition of "issue" in the trust instrument showed a clear intent to limit beneficiaries to biologically-related persons. Here, as noted, the district court specifically found that the settlors of the Trusts intended that the beneficiaries be actual biological descendants (or descendants through legal adoption). App. 40a. Thus, the requirement of the trust terms here cannot be rationalized as being really only an inquiry into whether a person has the legal *status* of a child, as it arguably could have been in *Johnson Trust*; here, an actual, physical fact of nature is required.

## APPENDIX A — OPINION OF THE STATE OF MINNESOTA COURT OF APPEALS FILED FEBRUARY 3, 2004

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A03-454**

In the Matter of the Trusteeship of the Trust Created Under Trust Agreement dated December 31, 1974; and

In the Matter of the Trusteeship of the Trust Created Under Trust Agreement Dated December 30, 1980; and,

In the Matter of the Trust Created Under Trust Agreement Dated December 30, 1980.

**Filed February 3, 2004**
**Reversed**
**Halbrooks, Judge**

Hennepin County District Court
File Nos. C6-91-166, C9-91-159, C5-91-160

Considered and decided by Halbrooks, Presiding Judge, Kalitowski, Judge, and Stoneburner, Judge.

### SYLLABUS

Minn. Stat. § 501B.16(3), (4) (2002), which authorizes trustees to petition the district court for an order determining trust beneficiaries and interpret trust terms, does not authorize trustees to mount a collateral attack on a beneficiary's previously determined paternity without regard for the standing and timeliness requirements of applicable parentage laws.

*Appendix A*

## OPINION

**HALBROOKS**, Judge.

Respondent trustees brought a petition pursuant to Minn. Stat. § 501B.16 (2002), requesting the district court to determine beneficiaries and interpret terms of three trusts created by settlor JHM. Appellants, JHM's ex-wife PAM and the children born to her during her marriage to JHM (the younger children), challenge the district court's interpretation of trust language determining the beneficiaries of the trusts. Appellants argue that the district court erred by (1) interpreting the subject trusts as limiting beneficiaries to JHM's biological children and (2) concluding that relevant portions of the applicable parentage act did not conclusively establish the biological paternity of the younger children, thereby precluding any subsequent paternity challenge brought by respondent trustees. By notice of review, respondent beneficiaries challenge the district court's conclusion that it lacked personal jurisdiction over the younger children and could not therefore compel them to undergo genetic testing.

We conclude that Minn. Stat. § 501B.16 does not authorize trustees to challenge a previous determination of paternity made consistent with applicable parentage laws, and that the trustees here may not challenge the younger children's paternity in the context of their trust-clarification action. We further conclude that were such a challenge authorized by section 510B.16, it would nonetheless be unavailable to respondent trustees here because of their failure to comply with the standing and timeliness requirements of applicable parentage laws.

*Appendix A*

## FACTS

In 1974, JHM created an irrevocable trust (the 1974 Trust), the primary beneficiaries of which were his "issue," defined in the trust as "all persons who are descended from [JHM], either by legitimate birth to or legal adoption by him or any of his legitimately born or legally adopted descendants." The 1974 trust authorizes the trustees to make discretionary distributions of trust income and principal to named beneficiaries.

In 1980, JHM created two more irrevocable trusts (the 1980 Trusts), both of which designated JHM's children as beneficiaries, defined "child" as "issue of the first generation," and defined "issue" as

> all persons who are lineal descendants of [JHM] (including legally adopted lineal descendants and including lineal descendants in gestation, but not including step-children and foster-children of any generation) except (i) persons who become descendants by legal adoption after attaining the age of 18 years and their descendants and (ii) illegitimate descendants and their descendants.

Each trust provided that neither JHM nor any other person could modify, amend, or revoke the trust in any respect. Each trust is to be interpreted according to law of its situs, which for all three trusts has always been Minnesota. The combined value of the trusts is approximately $900,000,000.

*Appendix A*

JHM has been married three times. The six children born during his first two marriages are referred to in this matter as "the older children." JHM married PAM, his third wife, in 1979; they were divorced in 1991. During the marriage, PAM gave birth to DHM (in 1983), CWM (in 1985), and ACM (in 1987), referred to in this matter as "the younger children." On each child's birth certificate, JHM is listed as the father. PAM and DHM, who has since reached majority, are represented in this matter; the district court is representing CWM and ACM pursuant to Minn. Stat. § 501B.19 (2002), which authorizes a court to represent interested minors in trust proceedings.

In 1986, JHM filed a petition to dissolve his marriage to PAM that challenged the paternity of DHM and CWM. ACM was not yet born. JHM subsequently filed a notice of voluntary dismissal of the action, stating that "with respect to the issues raised by him relative to the paternity of [DHM and CWM] . . . [he] voluntarily dismisse[d the] petition *with prejudice.*"

In 1989, the trustees of a fourth trust, created for the benefit of JHM and not at issue here, filed a petition in Minnesota district court seeking authorization to distribute trust assets to JHM's "children," a beneficiary class defined in the trust instrument as "all [of JHM's] legal issue and all adopted children." The petition, which was considered without objection from the older children, identified the younger children as JHM's and therefore eligible to receive trust distributions. In granting the petition, the district court specifically found that DHM, CWM, and ACM were JHM's children.

*Appendix A*

In 1991, JHM and PAM dissolved their marriage pursuant to a settlement agreement that specifically provided that the younger children are "children of the marriage" and stated that "no additional issue is contemplated." The agreement also provided:

> Husband further agrees that in the event of his death, with respect to any testamentary disposition of his assets held by him or in trust for his benefit, the [younger children] shall share equally and no differently than Husband's children from prior or future marriages. The Husband shall insure and require that in the event any new or future trusts are established by him, that the instruments will reflect the above agreement and that this obligation is specifically enforceable by a court of competent jurisdiction.

The agreement's article governing law and venue provides: "The parties agree that if any action or proceeding by either party dealing with the provisions of this Settlement Agreement and/or the [younger children] is commenced, Florida law will govern." The agreement was incorporated into the final judgment of dissolution of marriage entered in Florida in February 1991.

In 1997, respondent trustees, who are neither beneficiaries of the subject trusts nor members of JHM's family, received information that JHM is not the father of PAM's children. Reasoning that they had a duty to ascertain the proper trust beneficiaries, the trustees conducted an investigation and determined that there is a basis to reasonably conclude that PAM's children are not JHM's children.

*Appendix A*

In April 2000, two of the older children filed, and were granted, a petition in district court to determine JHM's capacity and to appoint them as plenary guardians over his person and property. The petition stated that the younger children are JHM's minor children.

In July 2000, respondent trustees brought a "Petition for Order to Determine Beneficiaries and for Other Relief" pursuant to Minn. Stat. § 501B.16(3), (4) (2002), which authorizes trustees to request that the district court interpret the terms of a trust in order to identify beneficiaries and determine the nature and extent of their interests. The petition requested an order "[a]uthorizing and ordering such proceedings as are reasonably necessary to identify the proper beneficiaries of the Subject Trusts." In an affidavit accompanying the petition, the trustees asserted that "blood or saliva testing could be used to resolve conclusively the question of the parentage of [the younger children] for the purpose of this proceeding."

The trustees then filed a motion for partial summary judgment, requesting a declaration that any beneficiary of the subject trusts must be a biological descendent of JHM and that the younger children are not JHM's "issue" as the term is defined in the subject trusts. Respondents, the older children, filed a memorandum in support of the trustees' motion. Appellants brought a cross-motion to dismiss the trustees' petition, arguing that the trustees are precluded under the Florida Parentage Act and the Minnesota Parentage Act from challenging the younger children's paternity by (1) the 1991 judgment and decree of dissolution; (2) JHM's voluntary dismissal with prejudice of the 1986 paternity

challenge; and (3) the 1989 Minnesota district court order finding the younger children to be JHM's for the purposes of a trust distribution. Appellants also moved for summary judgment on the grounds that the younger children are proper beneficiaries under the terms of the trusts, arguing that the term "issue" in the trusts does not require biological parentage. For the purposes of the cross-motions, the parties stipulated that the younger children "are not the biological children of [JHM]."

By an order issued in June 2002, the district court granted respondent trustees' motion, concluding that, under the terms of the trusts, beneficiaries must be JHM's biological or adopted children. The court authorized the respondent trustees "to conduct such proceedings and/or investigation as reasonably necessary to determine if the [younger children] are the biological children of [JHM]." The court denied all of appellants' motions, reasoning that (1) as to standing, the respondent trustees were specifically authorized by Minn. Stat. § 501B.16 to ascertain beneficiaries; (2) the 1991 dissolution judgment was conclusive as to the younger children's legitimacy and JHM's paternity for the purposes of child support, but had no preclusive effect on respondent trustees' challenge to the younger children's paternity for the purposes of determining the trust beneficiaries.

In July 2002, respondent trustees filed a Motion for Order Approving Process for Determination of Beneficiary Status in which they requested the district court to declare that the younger children are not the biological children of JHM unless they submit to genetic testing under agreed-upon, court-directed circumstances. Appellants filed motions

(1) opposing the genetic-testing proposal; (2) requesting reconsideration of the June 2002 order; and (3) to compel discovery related to respondent trustees' factual inquiry into the younger children's paternity. Appellants' request for discovery was premised on the argument that the younger children's parentage should be determined by "traditional means before any genetic testing." Appellants also argued that respondent trustees' July 2000 petition to determine beneficiaries was barred by the doctrine of laches because the trustees knew as early as December 1997 of allegations questioning the younger children's paternity.

In February 2003, the district court issued an order granting respondent trustees' motion and denying all of appellants' motions. The court subsequently issued a judgment declaring that the younger children are not the biological children of JHM for the purposes of the subject trusts unless they submit to genetic testing within either one year of the order or within one year of attaining majority, whichever is later. The court reasoned that because this is an in rem proceeding, it lacks personal jurisdiction over the younger children and cannot order them to undergo genetic testing. This appeal follows.

## ISSUE

Did Minn. Stat. § 501B.16 (2002) authorize the trustees to seek a determination that JHM is not the younger children's biological father?

*Appendix A*

## ANALYSIS

Appellants argue that the trustees and respondent beneficiaries are precluded from requesting a declaration that the younger children are not JHM's biological issue because such an authorization is not authorized by Minn. Stat. § 501B.16 (2002) where the children's paternity has been previously established pursuant to both Florida and Minnesota parentage laws. Appellants contend that the trustees' challenge to the younger children's parentage action fails to meet those acts' standing and timeliness requirements and is barred by res judicata as an attempt to relitigate a previously adjudicated issue. Statutory construction is a question of law, which we review de novo. *In re Estate of Zeno*, 672 N.W.2d 574, 576 (Minn. App. 2003).

Whether Minn. Stat. § 501B.16 authorizes trustees to challenge a beneficiary's parentage, as previously determined by applicable parentage laws, is an issue of first impression in Minnesota. Respondent trustees and respondent beneficiaries first argue that the trustees' action is not governed by either the Florida or the Minnesota Parentage Act because it does not seek to challenge the younger children's paternity as established by those statutes, but is merely seeking to clarify and enforce the terms of the subject trusts pursuant Minn. Stat. § 501B.16. We disagree with respondents' characterization of the trustees' action.

As the filings in this matter make clear, the challenge to the younger children's paternity is the kernel of the trustees' petition. Both respondents requested—and obtained—a declaration from the district court that the younger children

are not JHM's biological issue and cannot therefore be trust beneficiaries; without such a declaration, the trustees' petition for clarification would contain no practical request for relief. *Cf. In re Estate of Lamey v. Lamey*, 689 N.E.2d 1265, 1269 (Ind. Ct. App. 1997) (holding that where an action to identify heirs will necessarily require an action to determine paternity, "there is no practical difference between these two types of actions"). We further observe that the district court's June 2002 order specifically describes the trustees' action, and allows it to go forward, as "a challenge by the trustees of [JHM's] paternity of the younger children."

We agree with respondents' contention that the trustees have standing to request trust clarification pursuant to Minn. Stat. § 501B.16. But section 501B.16 does not thereby confer standing upon the trustees to challenge the younger childrens' paternity by bringing a collateral attack of a preexisting adjudication of parentage made consistent with applicable parentage laws.

We next address whether the applicable parentage law is that of Florida, where the younger children were born and reside, or of Minnesota, the situs of the subject trusts. Although the trusts are clear that Minnesota law must control their interpretation, the status of a person who may be a beneficiary of an instrument created under Minnesota law is determined by the laws of that person's domicile. *See In re Patrick's Will*, 259 Minn. 193, 196, 106 N.W.2d 888, 890 (1960) (stating that "[w]ith respect to a claimant's right to take from an estate being probated in this state, the status of the claimant is determined by the laws of his domicile, but his rights in the estate are determined by the laws of this

state"); Restatement (Second) of Conflicts of Laws § 287 (1971) (stating that generally, the traditional rule is that determinations of paternity status are governed by the local law under which the status was created).

"Before applying the choice-of-law analysis, this court must first determine whether the choice of one law will be outcome determinative, i.e., whether there is an actual conflict." *Kearns v. Am. Family Ins. Group*, 486 N.W.2d 796, 798 (Minn. App. 1992) (quotation omitted), *review denied* (Minn. Aug. 4, 1992). We therefore consider whether the application of Florida or Minnesota law will lead to different results in this case.

In Florida, courts maintain "the presumption that a child born in wedlock is the blood issue of the partners of such marriage." *Knauer v. Barnett*, 360 So.2d 399, 403 (Fla. 1978). Parentage proceedings in Florida are governed by the Determination of Parentage Act, Fla. Stat. ch. 742 (2002). That act provides:

> Any woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child may bring proceedings in the circuit court, in chancery, to determine the paternity of the child when paternity has not been established by law or otherwise.

Fla. Stat. § 742.011. Chapter 742 "is the exclusive remedy for establishing paternity in Florida." *Achumba v. Neustein*, 793 So.2d 1013, 1016 (Fla. Dist. Ct. App. 2001).

*Appendix A*

Paternity is established by law "when there has been an adjudication of paternity or by the filing of affidavits or stipulation acknowledging paternity." *G.F.C. v. S.G.*, 686 So.2d 1382, 1385 (Fla. Dist. Ct. App. 1997). The Florida Supreme Court has held that "a final judgment of dissolution of marriage which establishes a child support obligation for a former husband is a final determination of paternity." *D.F. v. Dep't of Revenue ex rel. L.F.*, 823 So.2d 97, 100 (Fla. 2002). Although subsequent challenges to legally established paternity may be brought pursuant to Fl. R. Civ. P. 1.540 for mistake, newly discovered evidence, or fraud, a motion for relief from a final judgment on any of those grounds must be brought "not more than 1 year after the judgment, decree, order, or proceeding was entered or taken." *Id.* (quoting Fl. R. Civ. P. 1.540(b)(5)); *Florida Dep't of Revenue ex rel. Sparks v. Edden*, 761 So.2d 436, 437 n.2 (Fla. Dist. Ct. App. 2000) (stating that "[a]bsent a showing of fraud upon the court a trial court is without jurisdiction to permit a challenge to a judgment of paternity more than one year after its rendition").

Here, the 1991 dissolution decree, as entered into judgment in Florida, stated that JHM was the younger children's father and established JHM's child-support obligations. We observe that JHM had previously stipulated to paternity of the two elder younger children when he voluntarily dismissed, with prejudice, his 1986 paternity challenge. We conclude that these acts established JHM's paternity of the younger children in Florida as a matter of law. We further observe that even had the younger children's paternity not been established under Florida law, only "[a] woman who is pregnant or has a child, [a] man who has

reason to believe that he is the father of a child, or [a] child" has standing to challenge paternity. Fla. Stat. § 742.011. The trustees therefore lack standing to challenge the younger children's paternity under Florida law. Further, even if they had standing, the trustees' challenge is barred as untimely under Florida law.

In its order permitting the trustees to challenge JHM's paternity of the younger children, the district court correctly cited *Daniel v. Daniel*, 695 So.2d 1253, 1254 (Fla. 1997), for the proposition that in Florida, "paternity and legitimacy are related, but nevertheless separate and distinct concepts." In *Daniel*, the court held that "legitimacy" refers to the status of a child born during a valid marriage, while "paternity" refers to the status of being the natural, or biological, father of a child. *Id.* at 1254-55. Citing *Daniel*, the district court concluded that Florida law preserves the presumption of legitimacy for children born during a marriage but "clearly permits a challenge to a determination of paternity, subject to various limitations." We find the court's reliance on *Daniel* misplaced in that the parties in *Daniel* stipulated in the marriage dissolution proceeding that the husband was not the biological father of the child born to his wife during the marriage. *See id.* at 1254. In the case before us, paternity was stipulated in an adjudicated dissolution decree. *Daniel* held that a child's legitimacy is unaffected where a former husband raises the issue of paternity during a dissolution proceeding. *Id.* at 1255. The Florida Supreme Court has since held that *Daniel* does not affect the principles that "a final judgment of dissolution of marriage which establishes a child support obligation for a former husband is a final determination of paternity" and that any subsequent challenge

to paternity must be brought under the provisions of the rules of civil procedure governing relief from judgment, decrees, or orders. *D.F.*, 823 So.2d at 100.

Florida courts have consistently "applied the principle that a divorce decree which establishes the paternity of a child is a final determination of paternity." *Anderson v. Anderson*, 746 So.2d 525, 526 (Fla. Dist. Ct. App. 1999) (quotation omitted). The trustees cite no authority permitting them to use the trust-clarification petition to circumvent the standing and timeliness requirements of the Florida Parentage Act or otherwise reopen the dissolution judgment establishing JHM's paternity of the younger children. *See Knauer*, 360 So.2d at 403 (holding that where father's acknowledgement of paternity rendered child legitimate for all purposes, factual proof of paternity by father was unnecessary and irrelevant in declaratory judgment proceeding to determine whether son was "blood issue" of father within meaning of trust instrument). We conclude that under the Florida Parentage Act, when a child is born into a marriage, the law does not expressly authorize a third party, who is not asserting paternity in the child, to petition the court for a mandatory determination of a child's paternity under the guise of a petition to clarify a trust instrument.

"[A]s a general matter, foreign dissolution decrees are entitled to full faith and credit from the Minnesota courts." *Mahoney v. Mahoney*, 433 N.W.2d 115, 119 (Minn. App. 1988), *review denied* (Minn. Feb. 10, 1989). We therefore conclude that the 1991 Florida dissolution decree and JHM's 1986 voluntary dismissal with prejudice of the 1986 paternity action conclusively established the younger children's status

as his biological issue under Florida law. That status is entitled to full faith and credit in Minnesota courts, and the trustees are therefore barred by the Florida Parentage Act's standing and timeliness requirements from challenging the younger children's paternity.

We next address the younger children's parentage status under Minnesota law. The Minnesota Parentage Act "provides the exclusive bases for standing to bring an action to determine paternity." *Witso v. Overby*, 627 N.W.2d 63, 65-66 (Minn. 2001). "Whether the trial court properly interpreted the parentage act is a question of law, which we review without deference to the trial court's conclusions." *In re Welfare of C.M.G.*, 516 N.W.2d 555, 558 (Minn. App. 1994). "Whether and when a person may bring a paternity action depends on which presumptions of paternity, if any, apply." *Witso*, 627 N.W.2d at 66 (citing Minn. Stat. § 257.57 (2000)). Under the Minnesota Parentage Act, a man is presumed to be the biological father of a child born to his wife. Minn. Stat. § 257.55, subd. 1(a) (2002). That presumption may be rebutted by clear and convincing evidence, *id.*, subd. 2 (2002), but only by the child, the mother, or the presumptive father, Minn. Stat. § 257.57, subd. 1 (2002), and "in no event later than three years after the child's birth," at which point the presumption becomes irrebuttable. *Id.*, subd. 1(b). Adjudications of parentage under the parentage act are "determinative for all purposes." Minn. Stat. § 257.66, subd. 1 (2002).

The parentage act's standing requirements contain no exceptions. *See Markert v. Behm*, 394 N.W.2d 239, 242 (Minn. App. 1986) (observing that the act confers standing

"only upon" those persons named). The act's timeliness requirements are similarly inflexible: "The obvious intent of the three-year statute of limitations is to make the presumption of legitimacy conclusive once a child reaches three years of age." *Pierce v. Pierce*, 374 N.W.2d 450, 452 (Minn. App. 1985), *review denied* (Minn. Nov. 4, 1985); *see also DeGrande v. Demby*, 529 N.W.2d 340, 343-44 (Minn. App. 1995) (holding that "[e]ven in the face of scientific evidence excluding [a party's] biological paternity, the three-year statute of limitations contained in the Minnesota Parentage Act is an absolute bar to an action to declare the father-child relationship nonexistent"), *review granted* (Minn. May 16, 1995), *appeal dismissed* (Minn. July 27, 1995); *Clay v. Clay*, 397 N.W.2d 571, 575 (Minn. App. 1986) (holding that even where the former husband "knew or should have known at the time of the dissolution" that the child born of the marriage was not his biological issue, the district court properly refused to vacate the portion of the marriage dissolution decree naming appellant father of the child in question, despite blood tests indicating he could not be the child's father), *review denied* (Minn. Feb. 17, 1987).

In support of its conclusion that "[t]he presumption of legitimacy is not a per se bar to a challenge by the trustees of [JHM's] paternity of the younger children," the district court relied on our decision in *In re Estate of Palmer*, 647 N.W.2d 13 (Minn. App. 2002), *aff'd*, 658 N.W.2d 197 (Minn. 2003), for the proposition that "[c]lear and convincing evidence of the parentage may be used [to challenge paternity] regardless of the limitations of the parentage act." We find the district court's reliance upon *Palmer* misplaced in that *Palmer* concerned the interpretation of a provision of the Minnesota

Probate Code stating that "the parent and child relationship *may* be established under the Parentage Act." *Id.* at 15 (quoting Minn. Stat. § 524.2- 114(2) (2000)). We concluded that because "may is permissive . . . [t]he probate court's jurisdiction over the determination of heirs and successors is not limited by the Parentage Act." *Id.* Minn. Stat. § 501B.16, under which the trustees brought their petition for trust clarification, contains no analogous permissive language authorizing the district court to look beyond the parentage act's justiciability requirements to entertain a paternity challenge.

We conclude that because JHM's biological paternity of the younger children was previously adjudicated under Minnesota law and because the trustees did not meet the standing and timeliness requirements of the Minnesota Parentage Act, their attempt to challenge the younger children's established paternity was not authorized by either Minnesota or Florida law. Because we conclude that no actual conflict is created by the choice of whether Florida or Minnesota law applies to the trustees' challenge to the younger children's paternity, no choice-of-law analysis is necessary.

In Minnesota, the "parent and child relationship" is "the legal relationship existing between a child and the child's biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations." Minn. Stat. § 257.52 (2002). "The guiding principle [of the parentage act] is that the best interests of the child are paramount." *Wilson v. Speer*, 499 N.W.2d 850, 852 (Minn. App. 1993), *review granted* (Minn. July 19, 1993), *appeal*

*dismissed* (Minn. Aug. 16, 1993). In *Michael H. v. Gerald D.*, 491 U.S. 110, 119-120, 109 S. Ct. 2333, 2340 (1989), the court stated that a determination of parentage made pursuant to a state parentage act reflects

> a substantive rule of law based upon a determination by the Legislature as a matter of overriding social policy, that given a certain relationship between the husband and wife, the husband is to be held responsible for the child, and that the integrity of the family unit should not be impugned.

(Quotation omitted.) Given the clear statements of policy expressed by the parentage act, we cannot conclude that the legislative intent embodied in that act would be furthered were we to permit third-party challenges to prior adjudications of paternity.

Other courts have reached the same conclusion after applying state parentage acts to facts similar to those before us. In *In re Trust Created by Agreement Dated Dec. 20, 1961*, 765 A.2d 746 (N.J. 2001), certain trust beneficiaries filed a challenge to a beneficiary's parentage and thus her status as a beneficiary of the trust. *Id.* at 751. The court held that the New Jersey Parentage Act, the applicable terms of which are substantively similar to those before us, foreclosed the beneficiaries' third-party attack on a beneficiary's parentage adjudicated on the basis of an acknowledgement of paternity in a divorce action; the beneficiaries thus could not collaterally attack the parentage in an attempt to exclude the beneficiary. *Id.* at 755. The court

specifically found that the term "issue," the same term used in the subject trusts before us, includes children whose paternity has been established under the state parentage act. *Id.* at 757.

Both the Minnesota and Florida parentage acts provide limited opportunity for certain specified individuals to challenge a determination of paternity previously adjudicated in a divorce proceeding. Although Minn. Stat. § 501B.16 authorizes respondent trustees to request a clarification of the trust language, that law does not authorize respondents to circumvent the standing and timeliness requirements of the applicable parentage acts in order to mount a collateral attack on the younger children's paternity. Because we conclude that Minn. Stat. § 501B.16 does not authorize the trustees' action, we do not address the alternative grounds for dismissal or the other issues raised by the parties.

## DECISION

Minn. Stat. § 501B.16 (2002) does not authorize trustees to collaterally attack a beneficiary's previously adjudicated parentage where no applicable parentage law authorizes third parties to seek a declaration disestablishing parentage under the guise of a trust-clarification action. The district court therefore erred in permitting respondent trustees to challenge the younger children's paternity and in declaring that the younger children are not the biological issue of JHM. We therefore reverse the district court's decision and order that summary judgment be entered in favor of appellants.

**Reversed.**

## APPENDIX B — ORDER OF THE STATE OF MINNESOTA, COUNTY OF HENNEPIN, DISTRICT COURT, FOURTH JUDICIAL DISTRICT, PROBATE-MENTAL HEALTH DIVISION DATED AND FILED FEBRUARY 12, 2003

**[FILED**
**FEB 12 2003**
**DIST. COURT ADMINISTRATOR**
**s/ [illegible]]**

**STATE OF MINNESOTA**

**COUNTY OF HENNEPIN**

**DISTRICT COURT**
**FOURTH JUDICIAL DISTRICT**
**PROBATE-MENTAL HEALTH DIVISION**

File No. C6-91-166
C9-91-159
C5-91-160

In the Matter of the Trusteeship of the Trust known as the "[JHM 1974 Trust]" Created Under Trust Agreement dated December 31, 1974

In the Matter of the Trusteeship of the Trust known as the "[1980 JHM Family Trust]" Created Under Trust Agreement Dated December 30, 1980

In the Matter of the Trust known as the "[1980 SMC Trust]" Created Under Trust Agreement Dated December 30, 1980

**ORDER DETERMINING TRUST BENEFICIARIES AND DENYING OTHER RELIEF**

*Appendix B*

This matter came before the court on October 17, 2002, on: (a) the Motion filed July 3, 2002 of Robert J. Struyk and Phillip H. Martin, co-trustees of all three trusts (hereinafter "trustees"), for an Order regarding the process to determine the biological descent of [DHM], [CWM] and [ACM] (hereinafter collectively referred to as "the younger children"); (b) the Motion filed July 31, 2002 of [PAM] and [DHM] to Compel Discovery; (c) the Request filed August 8, 2002 of [PAM] and [DHM] for a reconsideration of the court's order of June 21, 2002; and (d) the Motion filed October 16, 2002 of [PAM] and [DHM] to Strike Memorandum of Trustees responding to request for reconsideration and to the opposition to the process to determine the biological descent.

Following the hearing, counsel for the parties agreed to submit written memoranda, which were timely submitted on November 18, 2002.

Trustees appeared by their attorneys, Richard B. Solum and Joseph K. Thiegs.

[PAM] and [DHM] appeared by their attorneys, Frederick W. Morris and David R. Crosby.

[JM], [DDM], [KMR], [AMP], [DCM], and [SMK] (hereinafter collectively, "the older children") appeared by their attorney, Phillip A. Cole.

The matter was referred for hearing to Bruce Kruger, District Court Referee, who now reports to the Court making the following:

*Appendix B*

## FINDINGS OF FACT

1. The background of the establishment of the instant trusts and a summary of their pertinent provisions and the family history of [JHM] ([JHM]) are set forth in this court's order of June 21, 2002, and that information is herein incorporated by reference. That order determined that the beneficiaries of the three trusts are the biological descendants of [JHM] or persons descended from [JHM] through legal adoption, subject to some restrictions concerning the adoptions. Adoption is not involved in these proceedings. The instant hearing is a continuation of the earlier proceedings, and the court retains its jurisdiction as a proceeding *in rem*. Likewise, the court continues to represent [CWM] and [ACM], the two "younger children" who have not attained majority. Minn. Stat. § 501B.19 (2000).

2. [PAM] and [DHM] appealed this court's Order of June 21, 2002 to the Minnesota Court of Appeals, but they also moved the Court of Appeals for a determination that the June 21, 2002 order was not final and appealable. At the time of the instant hearing, the appeal was pending, and the Court of Appeals had not ruled on the motion concerning appealability. This court expressed doubt that it had jurisdiction to hear the matters raised in the four matters described above. Counsel and the court agreed to proceed with the hearing, and agreed the court would withhold any ruling until the Court of Appeals determined the appeal. On October 22, 2002, the Court of Appeals ruled that the June 21, 2002 Order was not final, and dismissed the appeal. No. C2-02-1725 (Minn. Ct. App., October 22, 2002). Counsel for the parties subsequently agreed to submit additional

written submissions on the four matters pending before this court by Friday, November 15, 2002, and the court actually received the last of these on Monday, November 18, 2002. The submissions were considered timely.

3. The request for reconsideration is based largely upon this court's citation of Est. of Palmer v. Palmer, No C7-02-182 (Minn. Ct. App., June 18, 2002). Initially, there is a suggestion that counsel for the trustees had made this court aware of that decision. It is correct that a copy of the decision was mailed to the court by counsel for the trustees, but this court became aware of the decision when it was announced and prior to receipt of the mailing. This court had, for practical purposes, written the June 21, 2002 order before it received the mailing from trustees' counsel. Secondly, and contrary to the assertion in the request, this court did not rely entirely or largely upon *Palmer*. In fact, this court did not determine whether Florida or Minnesota law would govern. It concluded that inquiry into parentage in the instant facts was not barred by either Florida or Minnesota law (citing *Palmer* for the latter). Given the residency of "the younger children," it is likely that Florida law would control, although that determination has not been made. Thirdly, this court is now aware that the Minnesota Supreme Court has accepted review of *Palmer*, and that oral arguments have already occurred.

4. The Motion to Strike is now moot. This court will not be re-considering its June 21, 2002 order. In addition, pursuant to the agreement of counsel and this court, all parties were given additional time to submit post hearing written memoranda, and did so. The court will consider these

memoranda, in addition to those submitted prior to the instant hearing. All parties have had the opportunity to be heard and to respond.

5. The motion to compel discovery is specifically based upon [PAM] and [DHM]'s claimed defense of laches. In summary, that defense alleges that the trustees could have brought the petitions earlier, but delayed bringing them until after the time that [JHM] was placed under guardianship and determined to be incompetent. It is asserted that although the trustees did not seek the guardianship, they worked in concert with two other children of [JHM] who initiated the proceedings. The effect of the delay was to prevent a possible adoption of the younger children by [JHM]. In pursuit of such defense, counsel seeks copies of reports the trustees obtained in the course of their investigation, and seek depositions of several of the past and present trustees. The trustees have asserted the reports are attorney work product compiled in preparation for these proceedings, and are not discoverable.

6. The trustees have also argued that the June 21, 2002 order foreclosed the defense of laches, because it denied the motion to dismiss these proceedings, determined that "issue" meant biological descendants, and directed further proceedings to determine biological descent. The trustees further argue that laches is not a defense to these proceedings, because no monetary relief is being sought from the younger children, there is no time limitation for the trustees to seek instructions from the court, the trustees did not work in concert with the guardianship proceedings, and the trustees did not in fact delay bringing the proceedings (rather they

conducted what they believed to be an appropriate investigation before filing the petitions). The younger children have not refuted the trustee's statements of the timing of their actions or the lack of cooperation with the guardianship proceedings.

7. The trustees' petition concerning the process for determining the biological descent is a request that this court order that the younger children will be conclusively determined not to be biological descendants of [JHM], unless they submit to DNA testing under agreed upon or court-directed circumstances. Their submissions to this court, although not received as evidence, strongly suggest that the younger children are not biological descendants of [JHM]. [PAM] and [DHM] have never asserted that the younger children are such descendants and have never denied the trustees' allegations. The trustees argue that engaging in discovery, whether limited to the defense of laches or directed to the overall issue of biological descent, is unseemly, contentious and invasive. They note that DNA testing, using a saliva sample taken by a quick swab of the inside of the cheek of the person, is really far less invasive and scientifically certain and accurate. They have not, however, asked the court to order such testing. Rather, they ask the court to avoid the litigation and direct that a determination of biological descent will be made in the absence of such testing, or will be made on the basis of the results of such testing.

Upon the foregoing Findings of Fact, the Referee makes the following

*Appendix B*

## CONCLUSIONS OF LAW

1. As noted in the June 21, 2002 order, the trustees have a duty to ascertain the beneficiaries of the trust, and to administer the trusts and distribute trust income and principal in accordance with the trusts' provisions. In these trusts, determination of beneficiaries means a determination of biological descent.

2. The proceedings before the court have been brought pursuant to Minn. Stat. 501B.16 (2000). The court has jurisdiction of the trust as a proceeding *in rem*. Minn. Stat. § 501B.24 (2000). It does not have personal jurisdiction over the trust beneficiaries.

3. The request for a re-consideration should be denied. Ultimately, this court's orders will all be appealed, and no useful purpose will be served by additional briefings to this court on the effect of *Palmer*, nor by a general reconsideration of the June 21, 2002 order.

4. The motion to strike should be denied as largely moot. All parties have had the opportunity to address all of the issues, and have done so.

5. Although this court did not specifically rule on the defense of laches in its June 21, 2002 order, the defense is not applicable to these proceedings. The doctrine does not apply where there is no claim for monetary gain. Moreover, beyond the assertion that [JHM] *might* have adopted the younger children after the these proceedings were instituted, there is no indication that the trustees unduly delayed their

petitions, that [JHM] had the capacity to adopt in the period before the start of these proceedings, or that he would have adopted if he had the capacity. There is no indication that the factual basis for it exists. Discovery related to this alleged defense should not be permitted.

6. Although the attempt to discover copies of the investigator's report(s) is primarily related to the laches defense, it also relates to the broader issue of the biological descent. In either event, such report(s) are attorneys' work product and are not subject to discovery.

7. The disallowance of further discovery, whether on the defense of laches or on biological descent, is a legal conclusion on those issues. It also reflects the court's representation of two of the minor children. The court is concerned that such discovery is far more harmful to them than the DNA testing. They are aware, or obviously soon will become aware, of the allegations that [JHM] is not their biological father. Having full-fledged discovery, including depositions of not only their mother, but also numerous other persons, on the circumstances surrounding their conception will not protect their privacy, dignity and well being. It is not in their best interests.

8. The trustees' suggested procedure for determination of biological descent is an instruction pursuant to Minn. Stat. § 501B.16. Although it contains a request to make a determination of biological descent, it does not request an order for DNA testing. It does request the court to determine descent on the basis of such testing, if the beneficiaries undergo it, or to determine descent on the failure to undergo

testing. This proceeding is an *in rem* proceeding, and this court has no personal jurisdiction of the beneficiaries and no authority to order them to submit to testing. The Rules of Civil Procedure, and specifically Rule 35, do not apply to this situation.

9. Although the court represents the two younger children who have not attained majority, it has no jurisdiction of or legal authority over them. Moreover, they lack the capacity to act on their own behalf. A conclusion or result that follows from their failure to take an action during their minority, such as submit to DNA testing, is of doubtful validity. Any such order has to extend for some period after each has attained majority, not unlike the tolling of various statutes of limitation during minority.

10. The June 21, 2002 order authorized the trustees to conduct such proceedings and/or investigation as reasonably necessary to determine if the younger children are the biological children of [JHM]. It directed that such proceedings and investigation be conducted in such a manner as to preserve the dignity, privacy and well being of the three children in question as much as is reasonably possible. As noted above, the trustees' allegations concerning the biological descent have not been denied. Pre-trial discovery and litigation on the issue is unseemly, invasive and obviously expensive. A better process is this court's order directing that the court will determine that the younger children are not the biological descendants, unless they submit to DNA testing within a certain period of their attaining majority. If they do submit to such testing, the determination will be made on the basis of the results of such testing. Such an approach

may actually require three different determinations and will necessarily involve a delay in the final determination until some period after the youngest child attains majority.

11. In Minnesota, the general rule is that minority suspends the running of statutes of limitations, and such statutes are generally not extended for more than one year after the attainment of majority. Minn. Stat. § 541.15 (2000). Using this as a guide, this court's order limiting the time for the DNA testing should extend the time until one year after a child attains majority.

The Court, having reviewed the Findings and Conclusions of the Referee and all of the files and records herein and being fully advised in the premises, now

**ORDERS**

1. The beneficiaries of the instant three trusts are persons who are biological descendants of [JHM] or descendants of [JHM] through legal adoption, subject to the adoption restrictions described in the [1980 JHM Family Trust] (C9-91-159) and the [1980 SMC Trust] (C5-91-160).

2. [DHM], [CWM] and [ACM] are conclusively determined not to be biological descendants of [JHM] or descendants of [JHM] through legal adoption, for purposes of the three instant trusts, unless they submit to DNA testing described herein and the results of such testing establish that they are such biological descendants. Such testing for each such person shall occur within one year of this order or within one year following such person's eighteenth birthday,

whichever period is later. The testing for all three persons shall be conducted by one reputable professional testing company regularly engaged in such testing. The testing company shall be selected by the trustees and shall regularly maintain a facility for the purpose of collecting DNA samples located within a reasonable distance of the [PAM]'s present Florida residence. The trustees shall pay the cost of such testing as an expense of trust administration. The company shall agree in writing to disclose the results of such testing only to the trustees and to the persons tested and/or their legal representatives and the trustees shall disclose such results only as reasonably necessary to the administration of the three trusts.

3. The Motion of the trustees to determine the process for determining the trust beneficiaries is granted, as set forth herein.

4. The Motions, Petitions, and Requests of [PAM] and [DHM] to Compel Discovery, to Reconsider the June 21, 2002 order, and to strike some the trustees' written submissions are all denied.

5. The original copy of this Order shall be filed in court file C6-91-166, and photocopies of this Order shall be filed in court files C9-91-159 and C5-91-160. The filing of the photocopies shall have the same force and effect as if a duplicate original copy of this order been filed in those court files.

6. Let judgment be entered accordingly.

*Appendix B*

Findings and Conclusions
Submitted and Order
Recommended by:

/s/ Bruce Kruger 2/12/03
Bruce Kruger Date
District Court Referee

/s/ Patricia L. Belois 2/12/03
Patricia L. Belois Date
Judge of District Court

[PROBATE COURT SEAL]

**APPENDIX C — ORDER OF THE STATE OF MINNESOTA, COUNTY OF HENNEPIN, DISTRICT COURT, FOURTH JUDICIAL DISTRICT, PROBATE-MENTAL HEALTH DIVISION DATED AND FILED JUNE 21, 2002**

**[FILED**
**JUN 21 2002**
**DIST. COURT ADMINISTRATOR**
**s/ [illegible]]**

**STATE OF MINNESOTA**

**COUNTY OF HENNEPIN**

**DISTRICT COURT**
**FOURTH JUDICIAL DISTRICT**
**PROBATE-MENTAL HEALTH DIVISION**

File No. C6-91-166
C9-91-159
C5-91-160

In the Matter of the Trusteeship of the Trust known as the "[JHM 1974 Trust]" Created Under Trust Agreement dated December 31, 1974

In the Matter of the Trusteeship of the Trust known as the "[1980 JHM Family Trust]" Created Under Trust Agreement Dated December 30, 1980

In the Matter of the Trust known as the "[1980 SMC Trust]" Created Under Trust Agreement Dated December 30, 1980

*Appendix C*

## ORDER INTERPRETING TRUST, GRANTING PARTIAL SUMMARY JUDGMENT AND GRANTING PETITION

This matter came before the court on March 6, 2002, after several continuances, on: (a) the Petition of Robert J. Struyk and Phillip H. Martin, co-trustees of all three trusts (hereinafter "trustees"), for an Order authorizing proceedings necessary to determine if certain persons are beneficiaries of the trusts, (b) the Motion of trustees for an order determining that a beneficiary of the trusts must be a biological descendant of [JHM] (hereinafter "[JHM]") or a descendant of him through legal adoption, and (c) the Motion of [PAM] and [DHM] to dismiss trustees' Petition and/or for Summary Judgment in their favor on the issues raised by trustees.

Following the hearing, counsel for the parties submitted written memoranda, which were timely submitted on March 20, 2002. Counsel submitted further written materials to the court on June 11 and 12, 2002, and the court has accepted such submissions as part of these matters.

Trustees appeared by their attorneys, Richard B. Solum, William J. Berens and Joseph K. Thiegs.

[PAM] and [DHM] appeared by their attorneys, Morris M Sherman, Frederick W. Morris, David R. Crosby, Jane F. Godfrey, Lowell V. Stortz and Stephen R. Litman.

[JM], [DDM], [KMR], [AMP], [DCM], and [SMK] (hereinafter collectively, "the older children") appeared by their attorney, Phillip A. Cole.

*Appendix C*

The matter was referred for hearing to Bruce Kruger, District Court Referee, who now reports to the Court making the following:

**FINDINGS OF FACT**

1. [JHM] and/or other members of the [M] family established the instant trusts for the benefit of [JHM]'s family. The trusts are irrevocable, and neither [JHM] nor any other person has any authority to amend or revoke the trusts. The trusts are and always have been administered in Minnesota. Prior court proceedings concerning these trusts occurred in Minnesota in 1991. Notice of the original Trustees' Petition dated July 17, 2000 was given by publication and mail pursuant to this court's order for hearing dated July 27, 2000. This court has jurisdiction of the trusts. Notices of trustees' Motion and the Motion of [PAM] and [DHM] were properly given.

2. [JHM] has been married three times. His first spouse was [SVM], and they had three children, whose names are [JM], [DDM] and [KMR]. His second spouse was [SGM], and they had three children, who names are [AMP], [DCM] and [SMK]. All six of these children have attained majority, are represented by the same attorney, and, as noted earlier, are collectively referred to as "the older children." No question has been raised concerning their parentage or status as beneficiaries of the three instant trusts.

3. [JHM]'s third spouse was [PAM], and three children were born to her during their marriage. Their names are [DHM], [CWM] and [ACM]. These children are hereinafter

collectively referred to as "the younger children." [DHM] has attained majority, and he and [PAM] are represented by counsel and are parties herein. [CWM] and [ACM] are minors, and are also parties herein. The court has undertaken to represent them pursuant to Minn. Stat. § 501B.19 (2000).

4. The instant trusts were all established before the birth of any of the younger children; the eldest of the younger children was born in 1983. Settlement Agreement dated January 24, 1991, Affidavit of [WHL], attachment C. There is no evidence (nor could there be) that [JHM] or the other settlors of the trusts had any specific intention with respect to the younger children. The examination is limited to the language of the trust instruments.

5. Trustees allege they have received information that the younger children are not the biological children of [JHM], although they were born during the marriage of [JHM] and [PAM]. They seek authority to conduct further investigation and/or legal proceedings to determine if the younger children are the biological children of [JHM]. The trustees' Motion for partial summary judgment is for a ruling that a person must be a biological descendant of [JHM] or a descendant of [JHM] through legal adoption in order to be deemed a beneficiary of the instant trusts. The older children join in the Petition of trustees, and in trustees' Motion for partial summary judgment. [PAM] and the younger children oppose trustees' Petition and Motion, and have moved for a dismissal of trustees' Petition, for denial of the summary judgment Motion, and for an Order that trustees either cannot raise the issue of the paternity (lack standing) or that the issue have previously been conclusively determined for purposes of the instant trusts.

6. The 1974 trust (C6-91-166) provides that "issue" of [JHM] are beneficiaries, and defines issue as ". . . all persons who are descended from . . . ([JHM]) . . . , either by legitimate birth to or legal adoption by him or any of his legitimately born or legally adopted descendants." Paragraph 1.05(1).

7. The 1980 trusts (C9-91-159 and C5-91-160) provide that issue of [JHM] are beneficiaries, and defines issue as ". . . all persons who are lineal descendants of the person whose issue are referred to (including legally adopted lineal descendants and including lineal descendants in gestation, but not including step-children and foster-children of any generation) except (i) persons who become descendants by legal adoption after attaining the age of 18 years and their descendants and (ii) illegitimate descendants and their descendants. . . ." Paragraph 3.01.

8. At least for the purposes of these motions, the parties have stipulated that the younger children are not the biological children of [JHM]. The parties disagree as to whether such stipulation may be used for other purposes, and the court has not been asked to rule on the total effect of the stipulation.

9. In the course of the first marriage dissolution proceedings (1986) between [PAM] and [JHM] (these occurred in Florida, the residence of [PAM], [JHM] and the younger children), [JHM] raised the issue of whether the two older younger children were his biological children. Affidavit of [WHL] dated February 4, 2002. Those proceedings were apparently dismissed, but the marriage was eventually dissolved by a second Florida proceeding in 1991. Ibid.

*Appendix C*

In the dissolution judgment dated February 5, 1991, the younger children were identified as . . . the parties' minor children . . . ," (Id. at attachment C), and the Settlement Agreement dated January 24, 1991 incorporated into the Judgment included extensive provisions concerning the parenting, the residence, and [JHM]'s financial support of the younger children. Ibid. There was no evidence that the dissolution judgment has been amended or vacated, and there was no evidence that [JHM] has failed to perform his financial obligations to the younger children under the dissolution judgment.

Upon the foregoing Findings of Fact, the Referee makes the following

## CONCLUSIONS OF LAW

1. As a part of their duties as trustees, the trustees of the instant trusts have a duty to ascertain the beneficiaries of the trust, and to administer the trusts and distribute trust income and principal in accordance with the trusts' provisions.

2. The beneficiaries of all three trusts are the "issue" of [JHM]. For purposes of the instant matter in which there are no adoptions and only the alleged children of [JHM] are being considered, the definitions of issue as persons "legitimately born to" [JHM] (the 1974 trust) or "lineal descendants" of [JHM] and specifically excluding illegitimate descendants (the 1980 trusts) both mean persons who are the biological children of [JHM]. Stated more broadly to include situations beyond the instant matters, the beneficiaries of all three trusts

are persons who are biological descendants of [JHM] or descendants of [JHM] through legal adoption, subject to the limitations on adoptions described in the 1980 trusts.

3. Florida has a well-established presumption that children born during a marriage are legitimate. Its courts, however, have distinguished between legitimacy and paternity. *See Daniel v. Daniel*, 695 So.2d 1253 (Fl. 1997). A child born during a marriage is legitimate, but that does not necessarily mean that the child is the biological child of the husband. Ibid. A parent who is not the biological or adopted parent has no duty to support such a child, even if the child is legitimate. Ibid. Thus Florida preserves the presumption of legitimacy for children born during a marriage, but it clearly permits a challenge to a determination of paternity, subject to various limitations.

2. The Florida Supreme Court has further ruled that a final marriage dissolution judgment which establishes a child support obligation for a former spouse is a final determination of paternity for purposes of child support. *D.F. v. Dep't of Revenue*, No. SC96288, (Fl. Sup. Ct., June 6, 2002). [JHM] thus cannot challenge the findings that the younger children are the children of his marriage to [PAM], that the children are legitimate, and that he was (is) obligated to provide them support in accordance with the dissolution decree. Moreover, the [M] marriage dissolution decree may be a final determination of paternity for other purposes, as between the parties and the younger children.

3. Minnesota also has the strong presumption of legitimacy for children born during a marriage and

corresponding limitations as to challenges to paternity. See Minn. Stat. §§ 257.51-75 (2000) (the Minnesota Parentage Act). That presumption and statutory procedure is not, however, the only basis for determination of parentage for all purposes. In a determination of intestate succession, for example, the parentage act *may* (emphasis added) be used. Minn. Stat. § 524.2-114(2) (2000). Clear and convincing evidence of the parentage may be used regardless of the limitations of the parentage act. *Estate of Palmer v. Palmer*, No. C7-02-182 (Minn. Ct. App., June 18, 2002).

4. The presumption of legitimacy is not a *per se* bar to a challenge by the trustees of [JHM]'s paternity of the younger children.

5. The instant trusts are and always have been irrevocable. The trustees must execute their duties free of any control of [JHM] or the other settlors. In addition, the trustees were not parties to the [M] marriage dissolution proceedings. The trustees do not stand in any privity relationship with [JHM]. The trustees are not bound by the findings of the Florida dissolution proceedings under a doctrine of res judicata or collateral estoppel.

The Court, having reviewed the Findings and Conclusions of the Referee and all of the files and records herein and being fully advised in the premises, now

*Appendix C*

## ORDERS

1. The Trustee's Motion for partial summary judgment is granted, and the beneficiaries of the instant three trusts are persons who are biological descendants of [JHM] or descendants of [JHM] through legal adoption, subject to the adoption restrictions described in the [1980 JHM Family Trust] (C9-91-159) and the [1980 SMC Trust] (C5-91-160).

2. The trustees of the three instant trusts are authorized to conduct such proceedings and/or investigation as reasonably necessary to determine if the three children born to [PAM] during her marriage to [JHM] are the biological children of [JHM]. Such proceedings and investigation shall be conducted in such a manner as to preserve the dignity, privacy and well being of the three children in question as much as is reasonably possible. The trustees shall request any court in which the proceedings are brought to seal the court files.

3. The Motions of [PAM] and [DHM] to dismiss the Petition, to deny the trustees' Motion for partial summary judgment, and to direct that the trustees are precluded from raising the issue of paternity are all denied.

4. The original copy of this Order shall be filed in court file C6-91-166, and photocopies of this Order shall be filed in court files C9-91-159 and C5-91-160. The filing of the photocopies shall have the same force and effect as if a duplicate original copy of this order been filed in those court files.

*Appendix C*

Findings
Submitted and Order
Recommended by:

| | |
|---|---|
| /s/ Bruce Kruger 6/21/02 | /s/ Patricia L. Belois 6-21-02 |
| Bruce Kruger Date | Patricia L. Belois Date |
| District Court Referee | Judge of District Court |

[PROBATE COURT SEAL]

## APPENDIX D — ORDER OF THE SUPREME COURT OF THE STATE OF MINNESOTA DENYING FURTHER REVIEW DATED AND FILED APRIL 22, 2004

[OFFICE OF
APPELLATE COURTS
APR 22 2004
FILED]

STATE OF MINNESOTA

IN SUPREME COURT

A03-454

In the Matter of the Trusteeship of the Trust Created Under Trust Agreement dated December 31, 1974; and In the Matter of the Trusteeship of the Trust Created Under Trust Agreement Dated December 30, 1980; and In the Matter of the Trust Created Under Trust Agreement Dated December 30, 1980.

AMENDED ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petitions of AMP, DDM, JM, DCM, KMR and SMK and of Robert J. Struyk and Phillip H. Martin for further review be, and the same are, denied.

Dated: April 22, 2004

BY THE COURT:

s/ Paul H. Anderson
Paul H. Anderson
Associate Justice

BLATZ, C.J., took no part in the consideration or decision of this case.

## APPENDIX E — JUDGMENT OF THE STATE OF MINNESOTA COURT OF APPEALS DATED AND ENTERED MAY 3, 2004

**STATE OF MINNESOTA**

Court of Appeals

Appellate Court # A03-454

Trial Court # C6-91-166 / C9-91-159 / C5-91-160

In the Matter of the Trusteeship of the Trust Created Under Trust Agreement dated December 31, 1974; and In the Matter of the Trusteeship of the Trust Created Under Trust Agreement Dated December 30, 1980;
and
In the Matter of the Trust Created Under Trust Agreement Dated December 30, 1980.

*Pursuant to a decision of Court of Appeals duly made and entered, it is determined and adjudged that the decision of the Hennepin County District Court, Probate/Mental Health Division herein appealed from be and the same hereby is reversed and judgment is entered accordingly. A certified copy of the entry of judgment and the court's decision is herewith transmitted and made part of the remittitur.*

*Appendix E*

*Dated and signed: May 3, 2004*

*FOR THE COURT*

*Attest:* s/ Frederick K. Grittner
*Clerk of the Appellate Courts*

*By:* s/ [illegible]
*Assistant Clerk*

*Appendix E*

**STATE OF MINNESOTA**

**COURT OF APPEALS**

**TRANSCRIPT OF JUDGMENT**

*I, Frederick K. Grittner, Clerk of the Appellate Courts, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.*

*Witness my signature at the Minnesota Judicial Center,*

*In the City of St. Paul* *May 3, 2004*
*Dated*

*Frederick K. Grittner*
*Clerk of the Appellate Courts*

*By: s/* Rob [illegible]
*Assistant Clerk*

*State of Minnesota, Appellate Courts*
*I hereby Certify that the foregoing instrument is a true and correct copy of the original as the same appears on record in my office this 4 day of May 2004*

*s/* Rob [illegible]
*Asst. Deputy Clerk*

(2)

SUPREME COURT, U.S.
FILED
SEP 1 2004
OFFICE OF THE CLERK

No. 04-97

IN THE

# Supreme Court of the United States

WILLIAM J. BERENS and PHILLIP H. MARTIN, Trustees,

*Petitioners*,

*v.*

CWM and ACM, by PAM, and DHM,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS

## BRIEF IN OPPOSITION FOR RESPONDENTS CWM, PAM, AND DHM

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## QUESTIONS PRESENTED

1. Where petitioners fail to raise a federal question in the state court proceedings, does this Court lack jurisdiction to issue a writ of certiorari?

2. Did the Minnesota Court of Appeals correctly determine that third-party trustees have no interest affording them standing to attack parent-child relationships conclusively established for all purposes in Florida, the domicile of the children, and Minnesota, the situs of the trust?

## LIST OF PARTIES

Petitioners William J. Berens (as successor to Robert J. Struyk) and Phillip H. Martin are trustees of three trusts: the JHM 1974 Trust, the 1980 JHM Family Trust, and the 1980 SMC Trust. They appear in this litigation in their capacities as trustees. They are referred to herein as "Petitioners" or "Trustees."

Respondent ACM is a minor, and appears in this litigation through PAM, his mother. DHM and CWM, sons of JHM and PAM who have reached the age of majority, are also Respondents. These three children of JHM and PAM are referred to herein as "the Younger Children."

In addition to the above parties who are listed in the caption, the following other children of JHM through previous marriages also appeared in the proceedings below:

AMP
DDM
JM
DCM
KMR
SMK

These six children are referred to herein as "the Older Children."

By Orders of the Minnesota Court of Appeals filed on June 25, 2003 and July 21, 2003, the parties were directed to use initials or pseudonyms in their filings when referring to the parties to this matter. Accordingly, the initials used in the Minnesota appellate courts are used herein.

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## RELEVANT AUTHORITY INVOLVED

Petitioners cite the due-process provision of the United States Constitution amendment XIV as the sole predicate for their Petition. However, as discussed below, Petitioners failed to raise this provision in any of the Minnesota state court proceedings.

## STATEMENT OF THE CASE

### A. The Trusts

The trusts ("Trusts") created by JHM at issue here are: (1) the JHM 1974 Trust dated December 31, 1974 ("1974 Trust"); (2) the 1980 JHM Family Trust dated December 30, 1980 ("1980 JHM Trust"); and (3) the 1980 SMC, KWM and LMS Trust dated December 30, 1980 ("1980 SMC Trust").[1] These latter two trusts are also collectively referred to herein as the "1980 Trusts." The Trusts all left the class of beneficiaries open to those born after the Trusts were established. Minnesota is the situs of the Trusts.

The principal beneficiaries of the 1974 Trust are JHM's "issue." The 1974 Trust defines "issue" as:

> [A]ll persons who are descended from the person referred to, either by legitimate birth to or legal adoption by him.

The 1980 JHM Trust names JHM's grandchildren as the primary beneficiaries. The primary beneficiaries of the 1980

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1. It is undisputed that JHM funded the 1980 SMC Trust and thus is the trust settlor. (Mem. in Supp. of Mot. to Dismiss dated Feb. 6, 2002, at 8-10.)

SMC Trust are JHM's children. In both 1980 Trusts, a "child" or "grandchild" is defined as "issue." The 1980 Trusts contain the identical definition of "issue":

> "Issue" means all persons who are lineal descendants of the person whose issue are referred to (including legally adopted lineal descendants and including lineal descendants in gestation, but not including step-children and foster-children of any generation) except (i) persons who become descendants by legal adoption after attaining the age of 18 years and their descendants and (ii) illegitimate descendants and their descendants.

Petitioners concede there is no extrinsic contemporaneous evidence of JHM's intent with respect to the definitions of "issue." As one of their attorneys acknowledged, "[T]here is now no evidence that [JHM] did think about this [language] one way or the other." (Respondents' Ct. of Appeals App. at 217.)

**B. JHM, PAM and Their Children**

The Younger Children were born in Florida during JHM and PAM's marriage, which began in 1979 and ended in 1991. JHM is listed as the father of the children on their respective birth certificates. The Younger Children have lived in Florida since their birth, as have JHM and PAM.

JHM has six Older Children from two earlier marriages. Three of the Older Children—JM, DDM, and KMR—are trustees of the two 1980 Trusts. JHM is one of several heirs to a large, closely-held company fortune. Petitioners, the remaining trustees, are members of the company's law firm.

The Younger Children's parentage was first addressed in 1986, when JHM filed for divorce from PAM. In his Divorce Petition, JHM denied being the father of DHM and CWM. JHM later dismissed the divorce action, and stipulated, in the dismissal filed with the Florida Court, that "with respect to the issues raised by him relative to the paternity of [CWM and DHM], he [JHM] hereby voluntarily dismisses his petition with prejudice."[2] (Emphasis in original.) JHM and PAM continued their marriage for an additional five years, during which the youngest child, ACM, was born.

In 1989, the trustees of another family trust not in issue here brought a petition in Minnesota state court seeking authorization to distribute many millions of dollars to all of JHM's "children," defined in the trust as "all legal issue". In this petition, the Younger Children (along with the Older Children) are identified as JHM's children, and as such, eligible to receive trust funds. The Older Children all received notice of this petition; none of them made an appearance or filed an objection in the proceeding. The district court found that the Younger Children are JHM's children (i.e., his legal issue), and thus beneficiaries of the trust.

JHM divorced PAM in 1991. In the divorce Settlement Agreement, incorporated within an adjudicated Judgment and Decree in Florida, JHM acknowledged that the Younger Children are his children born of his marriage to PAM. The Settlement Agreement and Judgment and Decree conclusively resolved any issue of parentage of all the Younger Children, to the extent any such issue remained. JHM not only

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2. Petitioners fail to mention in their statement of facts that the dismissal was with prejudice.

acknowledged the Younger Children as his and agreed to support them, but also specifically agreed that the Younger Children would share equally with his other children in any testamentary disposition of his assets, including assets held in trust for his benefit. He did so with knowledge they are not his natural children. Contrary to Petitioners' statement of facts, the Settlement Agreement was not simply an agreement for support—it was an adjudication of parentage under Florida law.

### C. The Legal Proceedings Seeking to Eliminate the Younger Children as Trust Beneficiaries.

In 2000, at least nine years after the Younger Children's parentage had been finally and conclusively established for all purposes under Florida law, JHM was declared legally incapacitated in an action brought by two of the Older Children, KMR (a trustee of the 1980 Trusts) and SMK. Less than three months after JHM was declared legally incapacitated, Petitioners, at the behest of the Older Children, brought an action in Minnesota state district court, purportedly under Minn. Stat. § 501B.16,[3] in which they asked the court to determine the beneficiaries of the Trusts.

Petitioners, supported by briefs filed by the Older Children, moved for partial summary judgment construing the Trusts as limiting beneficiaries to JHM's biological children. They also asked the Court to order blood or saliva tests to resolve the question of the "parentage" of the Younger

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3. Section 501B.16 permits a trustee to petition the court to, among other things, interpret a trust and determine the persons having an interest in the trust's income and principal. Minn. Stat. § 501B.16 (2002).

Children. Respondents moved to dismiss the petition because Petitioners lack standing to challenge the parentage of the Younger Children, which has long been established in Florida, their domicile. In the alternative, Respondents sought summary judgment based on the language of the Trusts, which does not require biology as a criteria for beneficiary status. The district court granted Petitioners' Motion for Partial Summary Judgment, finding that beneficiaries need to be biological descendants, and denied Respondents' Motion to Dismiss, finding the Trustees have standing to challenge the paternity of the Younger Children. The district court subsequently ruled that the Younger Children are not the biological descendants of JHM unless they submit to DNA testing to establish their biological connection to him.

Recognizing this action as a paternity challenge,[4] the Minnesota Court of Appeals reversed the district court's grant of partial summary judgment to Petitioners, and ordered entry of summary judgment in favor of the Respondents. The court held that because the Younger Children's paternity had been conclusively determined under applicable parentage laws, Petitioners could not collaterally challenge the determination under the guise of seeking trust instruction under Minn. Stat. § 501B.16. The Court of Appeals explained that because the presumption of the Younger Children's parentage is now irrebuttable under both Florida and Minnesota law, the Younger Children are JHM's biological descendants as a matter of law.

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4. "As the filings in this matter make clear, the challenge to the younger children's paternity is the kernel of the trustees' petition." *In the Matter of the Trusteeship of the Trust Created Under Trust Agreement dated Dec. 31, 1974* ("12/31/74 Trust Case"), 674 N.W.2d 222, 228 (Minn. Ct. App. 2004).

Petitioners and the Older Children both filed petitions for further review of the Court of Appeals' decision with the Minnesota Supreme Court. The Minnesota Supreme Court denied these petitions.

## REASONS FOR DENYING THE PETITION

"A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. Petitioners present no such reasons for this Court's review of the decision below. Indeed, the decision below does not conflict with a decision of this Court, any Court of Appeals, or any other state or federal court. It raises no question worthy of review by this Court. Instead, the decision is consistent with long-established precedent uniformly noted with approval by this Court and numerous other courts nationwide. That precedent protects the conclusive presumption of parentage for children born in wedlock from collateral attack; it fosters substantive social policies of protecting the integrity of the family and promoting legitimacy.

Moreover, Petitioners' demand for a writ of certiorari is premised upon faulty jurisdictional claims and multiple misstatements of law and fact. No federal due-process challenge was made below. Even if one had been made, there is no valid basis on which to justify a challenge to the conclusively established parentage of the Younger Children.

## I. Because Petitioners Failed To Raise A Federal Question In The State Court Proceedings, This Court Should Refuse To Issue A Writ Of Certiorari Due To Lack Of Jurisdiction.

In order for this Court to have jurisdiction to issue a writ of certiorari, the validity of a state statute must have been "drawn into question" on a federal ground, or a federal right must have been "specifically set up or claimed." 28 U.S.C. § 1257(a) (1993). The failure to properly raise a federal question in the state court action necessarily leaves the Supreme Court without jurisdiction. *See Hill v. California*, 401 U.S. 797, 805 (1971); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 n.16 (1983) (the Court will not "decide federal constitutional issues raised here for the first time on review of state court decisions") (quoting *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969)).

Here, Petitioners failed to properly raise a federal question before the Minnesota state courts. While Petitioners assert that the Minnesota Court of Appeals denied them "due process under the 14th Amendment to the U.S. Constitution" (Pet. at 2), there is *not a single reference* in any of Petitioners' briefs or submissions filed with the district court **or** the Minnesota Court of Appeals to either "due process" (federal or state) or the "Fourteenth Amendment."[5] Because Petitioners did not raise due-process as an issue with either the district court or the Minnesota Court of Appeals, their petition seeking a writ of certiorari must fail.

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5. Similarly, counsel for the Trustees never addressed federal due-process concerns during oral argument at the district court or the Court of Appeals.

Supreme Court Rule 14.1(g)(i) requires a petitioner to specify the stage of state-court proceedings in which the federal questions sought to be reviewed were raised, the method in which the questions were raised, and the way the questions were passed on by the state courts. Here, Petitioners cite the one and only paragraph in the Trustees' Petition for Further Review to the Minnesota Supreme Court—prepared and filed *after* the issuance of the ruling adverse to Petitioners by the Court of Appeals—in which they mentioned the concept of "due process" at all:

> The trustees are the legal owners of the Trusts. The beneficiaries are the beneficial owners. By ignoring the rules regarding estoppel, the Court of Appeals' decision deprives these owners of their property on the strength of a Florida divorce case in which none of them could be heard and in which the property of the Trusts was not involved. If allowed to stand, this would be a violation of due process. *See Lustik v. Rankila*, 131 N.W.2d 741, 744 (Minn. 1964) (due process prevents the result of a prior proceeding from binding adversely a litigant who was a stranger to the earlier proceeding and had no opportunity to be heard); *Doerr v. Warner*, 76 N.W.2d 505, 511 (Minn. 1956) ("in the exercise of due process no court, regardless of its jurisdictional structure, may adjudicate directly upon a person's rights without such person being either actually or constructively before the court").

(Pet. for Further Rev. at 4.)

This single paragraph is insufficient to invoke this Court's jurisdiction for two reasons. First, raising a federal question for the first time in a petition for review with the highest state court is generally insufficient unless the court actually entertains the petition and expressly decides the question. *See Adams v. Robertson*, 520 U.S. 83, 89 n.3 (1997); *Hanson v. Denckla*, 357 U.S. 235, 243-44 (1958); *Radio Station WOW v. Johnson*, 326 U.S. 120, 128 (1945). Here, the Minnesota Supreme Court denied Petitioners' request for further review, and would not have entertained Petitioners' belated constitutional challenge even if it had accepted review. Under Minnesota law, a party cannot challenge the constitutionality of a statute for the first time on appeal to the Minnesota Supreme Court. *State v. Schleicher*, 672 N.W.2d 550, 555 (Minn. 2003). Because the Minnesota Supreme Court would not have considered Petitioners' constitutional arguments, this Court lacks jurisdiction to do so. *See Exxon Corp. v. Eagerton*, 462 U.S. 176, 181 n.3 (1983) (when constitutional issue is not decided below in a manner sufficient to bring the matter before a state appellate court, the U.S. Supreme Court lacks jurisdiction to consider the federal question).

Second, general "due-process" arguments such as Petitioners' are an inadequate jurisdictional basis for issuance of a writ of certiorari:

> [T]he passing invocations of "due process" we found [in petitioners' state court reply brief] fail to cite the Federal Constitution or any cases relying on the Fourteenth Amendment, but could have just as easily referred to the due process guarantee of the Alabama Constitution . . . and

> thus did not meet our minimal requirement that it must be clear that a *federal* claim was presented.

*Adams*, 520 U.S. at 89 n.3 (emphasis in original); *see also Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 77-78 (1988) (vague appeal to constitutional principles does not preserve a federal due-process claim).

The single paragraph that contains the whole of Petitioners' "due-process" claim makes no reference to federal due process or the Fourteenth Amendment of the United States Constitution; it refers to "due process" only generally in relation to "estoppel," and cites two Minnesota state court cases as supporting authority. Petitioners provide no indication that they are making a federal constitutional claim.[6] Because Petitioners failed to make any specific reference to federal due process, either by citing the Federal Constitution or cases relying upon the Fourteenth Amendment, they have not met the Court's minimal requirement that a federal claim was properly presented below. Consequently, their petition for a writ of certiorari should be denied.

---

6. Indeed, if Petitioners had intended a constitutional challenge—state or federal—to the Minnesota Parentage Act, Rule 24.04 of the Minnesota Rules of Civil Procedure mandated that Petitioners notify the attorney general that the constitutionality of the Parentage Act was being drawn into question within such time as to afford the attorney general an opportunity to intervene. Petitioners did not provide the attorney general with notice of a constitutional challenge, calling into greater question whether they made such a constitutional challenge—as opposed to rhetorical flourish.

## II. Even If Petitioners Properly Raised A Federal Question, They Have Not Been Deprived Of Due Process.

### A. Petitioners' Alleged Deprivation of Property Without Due Process is Predicated Upon Misstatements of Law and Fact.

Petitioners claim they have a protected due-process right with respect to the Trust property that permits them to seek relief in this Court. This claim is plainly wrong. Indeed, Petitioners have no standing to appeal from the Court of Appeals judgment, much less assert phantom "due-process" rights. Under Minnesota law, an entity must be an "aggrieved party" to appeal from a judgment. *In Re Trust Created by Hill on Dec. 31, 1917*, 499 N.W.2d 475, 487 (Minn. Ct. App. 1993). It is well established that a trustee who is not adversely affected in any way by the matter he seeks to challenge is not "aggrieved," and thereby has no standing to obtain a judicial resolution of his challenge. *See, e.g., Toledo Trust Co. v. Farmer*, 135 N.E.2d 356, 361 (Ohio 1956); *First Nat'l Bank of Dewitt v. Yancey*, 826 S.W.2d 287, 288 (Ark. Ct. App. 1991), *In re Trust Under Agreement of David H. Keiser, Dated December 23, 1925*, 572 A.2d 734, 736 (Pa. Super. Ct. 1990).

The sole constitutionally protected interest claimed is a trustee's legal title to trust assets. However, Petitioners' legal title to trust assets is wholly unaffected by whether the Trusts have six or nine beneficiaries. The very authorities cited by Petitioners confirm that a title holder to trust assets who does not possess a beneficial interest in the Trusts does not possess sufficient rights to assert a cause of action with respect to the trust property. *See Farmers State Bank of Fosston v. Sig*

*Ellingson & Co.*, 16 N.W.2d 319, 322 (Minn. 1944) (while the trustee may have title to the property, the chose of action rests with the beneficiary). "[W]here the order or judgment has to do with the right of one class of beneficiaries to share in the distribution of the trust estate as against another class, the trustee has no appealable interest. . . ." P.H. Vartanian, Annotation, *Right of Trustee of Express Trust to Appeal from Order or Decree Not Affecting His Own Personal Interest*, 6 A.L.R.2d 147 § 2 (2004); *see also Trust Under Agreement of David H. Keiser* 572 A.2d at 737. ("Where, as here, the order concerns the distribution of the trust assets to one group of beneficiaries at the expense of another group, the trustee is merely an unaggrieved stakeholder with no immediate or appealable interest."). The Court of Appeals' decision deprives the Trustees of no property whatsoever. Thus, Petitioners have no standing to assert "due-process" rights with respect to Trust assets.

Petitioners also baldly assert that the Court of Appeals did not disturb a district court determination that the trust terms "legitimately born to" and "lineal descendants" mean only persons of "biological" descent and thus Petitioners' interpretation of the language is the law of the case. This, too, is wrong. The Court of Appeals did not leave the district court's trust interpretation "undisturbed"; instead, it ***reversed*** the grant of summary judgment in favor of the Trustees and ordered summary judgment be entered in favor of Respondents.[7]

7. There were two primary issues before the Minnesota Court of Appeals: (1) whether Petitioners have standing to challenge the Younger Children's established parentage; and (2) if they do have standing, do the terms of the Trusts limit beneficiaries to those with a biological connection to JHM. As to the first issue, the Court of Appeals determined that Petitioners did not have standing to challenge the Younger Children's parentage, which means under applicable state law they are deemed biological descendants as a matter of law. (Cont'd)

This reversal voids the district court's ruling in its entirety.[8] *See Kulinski v. Medtronic Bio-Medicus, Inc.*, 577 N.W.2d 499, 502-03 (Minn. 1998) ("to reverse a judgment means to overthrow it by contrary decision, make it void, undo or annul it for error") (citing *Black's Law Dictionary* 1319 (6th ed. 1990)); *see also* 5 Am. Jur. 2d *Appellate Review* § 861 (2002) ("A compete reversal generally annuls the judgment below, and the case is put in the same posture in which it was before the judgment was entered. Thus, after the reversal on appeal, the parties rights are left wholly unaffected by any previous determination that was reversed. . . ."); *Gluscic v. Avera St. Luke's*, 649 N.W.2d 916, 920 (S.D. 2002) ("a reversal of a judgment without other direction nullifies the judgment, findings of facts, and conclusions of law, and *leaves the case standing as if no judgment or decree had ever been entered*") (emphasis in original; citation omitted). Instead, the Court of Appeals' confirmed that the Younger Children are irrebuttably JHM's legal and biological children:

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(Cont'd)

This determination necessarily mooted the second issue of trust language interpretation, a fact the Court of Appeals recognized: "Because we conclude that Minn. Stat. § 501B.16 does not authorize the trustees' action, we do not address the alternative grounds for dismissal. . . ." *12/31/74 Trust Case,* 674 N.W.2d at 232-33. Had the Court of Appeals ruled upon the meaning of the trust terms, it would have rendered an advisory opinion, which the Minnesota Appellate Courts avoid. *Jasper v. Commissioner of Pub. Safety*, 642 N.W.2d 435, 439 (Minn. 2002); *see also* Restatement (Second) of Trusts § 259 cmt. c (1959) (courts are precluded from issuing advisory opinions in response to trustees' requests for instructions).

8. The district court's interpretation of the trust terms, which was made without legal or factual citation, is clearly wrong under Minnesota law. (*See* Resp. 07/07/03 Ct. of App. Br. at 10-21; Resp. 08/04/03 Ct. of. App. Reply Br. at 5-12.)

"We therefore conclude that the 1991 Florida dissolution decree and JHM's 1986 paternity action conclusively established the younger children's status as his biological issue under Florida law. That status is entitled to full faith and credit in Minnesota courts. . . ."[9] *12/31/74 Trust Case*, 674 N.W.2d at 230.

### B. Even If Petitioners Had a Beneficial Interest in the Trusts, There Would Have Been No Deprivation of Due Process.

Even if, contrary to law and fact, Petitioners had the right to challenge the effect of JHM's divorce proceedings,[10] they still would not have had the right to prevent JHM from exercising the rights he retained under the terms of the Trusts. He had the right to add additional beneficiaries by having more children—conceiving them, acknowledging them, or adopting them. Both acknowledgment and adoption are conclusive methods of having children under Florida and Minnesota law. Petitioners' claim that their due-process rights have thus been violated is patently unfounded. This Court has rejected arguments like Petitioners', holding that even a biological father has no due-process right to challenge a conclusive presumption of paternity arising from a state parentage act. *Michael H. v. Gerald D.*, 491 U.S. 110, 121 (1989).

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9. Under the Minnesota Parentage Act, "a man is presumed to be the **biological** father of a child" born in wedlock. Minn. Stat. § 257.55, subd. 1 (2002) (emphasis added). Because the time limit for challenging this presumption has expired, JHM *is* the legal and biological father of the Younger Children.

10. Petitioners concede they could not have participated in these proceedings. (Pet. at 7 n.6.)

In *Michael H.*, this Court confirmed that the United States Constitution does not bar a state from establishing a substantive rule of law that a child born within wedlock is the lawful child of the husband, and, under such circumstances, from deeming paternity not to be an adjudicatory fact subject to litigation other than as expressly authorized by statute:

> While §621 [California paternity statute] is phrased in terms of a presumption, that rule of evidence is the implementation of a substantive rule of law. California declares it to be, except in limited circumstances, *irrelevant* for paternity purposes whether a child conceived during and born into, an existing marriage was begotten by someone other than the husband .... As the Court of Appeals phrased it "The conclusive presumption is actually a substantive rule of law based upon a determination by the Legislature as a matter of overriding social policy, that given a certain relationship between the husband and wife, the husband is to be held responsible for the child, and that the integrity of the family should not be impugned." Of course the conclusive presumption not only expresses the State's substantive policy but also furthers it, excluding inquiries into the child's paternity that would otherwise be destructive of family integrity and privacy.

*Michael H.*, 491 U.S. at 119-20 (citation omitted).

Florida law, which governs the Younger Children's legal status, implements substantive polices protecting the integrity of families by making determinations of parentage conclusive

for all purposes. *Knauer v. Barnett*, 360 So. 2d 399, 406 (Fla. 1978); Fla. Stat. § 742.091 (2002); Fla. Stat. § 742.011 (2002). Here, the Minnesota Court of Appeals recognized that the Younger Children's parentage had been conclusively determined in Florida,[11] and that the Minnesota Parentage Act extends full faith and credit to such determinations. Minn. Stat. § 257.67, subd. 1 (2002); *see also* Minn. Stat. § 257.66, subd. 1 (2002) (adjudications of parentage are "determinative ***for all purposes***") (emphasis added). The Court of Appeals' holding that Petitioners are thus barred from challenging the Younger Children's parentage is entirely consistent with *Michael H.*

Petitioners' attack on *Michael H.* is unavailing.[12] Courts in many states have recognized the pitfalls in the outcome urged by Petitioners and addressed by *Michael H.*, and, therefore, have precluded parentage challenges by outsiders.[13]

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11. In a transparent effort to minimize the determinative effects of the 1991 divorce proceedings, Petitioners improperly refer to the Final Judgment of Dissolution of Marriage—by which JHM judicially acknowledged the Younger Children as his and agreed that they were to share equally with his other children in any testamentary disposition of his assets (Resp. Ct. of Appeals App. 67-72)—as a mere stipulation regarding "child support obligations." (Pet. at 4.)

12. Petitioners' attempt to distinguish *Michael H.* on the purported grounds that there were no third–party property interests at stake does not withstand scrutiny. Any determination of a parent-child relationship will necessarily affect property interests of third parties by determining the child's rights to inherit property and to receive benefits. Under Florida and Minnesota law, such third parties do not have standing to challenge a determination of parentage.

13. *See In re Trust Created by Agreement Dated Dec. 20, 1961*, 765 A.2d 746, 758 (N.J.), *cert. denied*, 534 U.S. 889 (2001) (prior

(Cont'd)

For example, the New Jersey Supreme Court, in a case with facts very similar to those here (and as to which this Court denied

(Cont'd)
adjudication of child-parent relationship bars third-party challenge to parentage, based upon language and policy of New Jersey's Parentage Act); *Knauer v. Barnett*, 360 So. 2d 399, 405 (Fla. 1978) (right to dispute legitimacy of child born in wedlock limited to husband and wife); *Weir v. Ferreira*, No. F026210 1997 Cal. App. LEXIS 1046 (Cal. Ct. App. Dec. 17, 1997) (trustees seeking to determine "issue" of trusts were barred from relitigation of question of child's parentage); *In the Matter of Estate of Lamey*, 689 N.E.2d 1265, 1268-69 (Ind. Ct. App. 1997) (child's uncle precluded from attempts to "disestablish" child's paternity for purposes of determining heirs); *Deatherage v. Phipps*, 441 P.2d 1020, 1023 (Okla. Sup. Ct. 1967) (where neither husband or wife disputed legitimacy of child born in wedlock, all others were barred from doing so); *Byrd v. The Travelers Ins. Co.*, 275 S.W.2d 861, 863-64 (Tex. Civ. App. 1955) ("If the father renounces the right to bastardize his alleged son . . . it is extinguished and can never thereafter be exercised by anyone"); *In re Paternity of Vainio*, 943 P.2d 1282, 1285 (Mont. 1997) (siblings lacked standing); *In re Saloy*, 10 So. 872, 876 (La. 1892) (if father does not dispute paternity, "the door is forever closed" to others); *Theis v. City of Miami*, 564 So. 2d 117, 119 (Fla. 1990) (employer precluded from challenging legitimacy of child born in wedlock); *Gonzales v. Pacific Greyhound Lines*, 214 P.2d 809, 811 (Cal. 1950) (employer of decedent-father, collateral heirs and non-relative beneficiaries cannot question legitimacy of child born in wedlock); *Favre v. Celotex Co.*, 139 So. 904, 905 (La. Ct. App. 1932) (employer of decedent-father denied standing to dispute parentage of child born in wedlock); *Beard v. Vincent*, 141 So. 862, 863-64 (La. 1932) (collateral heirs of decedent barred from challenging parentage of children born during marriage); *Clement v. Merchants Nat'l Bank of Mobile*, 493 So. 2d 1350, 1352 n.2 (Ala. 1986) (parties questioned for not raising standing issues for collateral relative); *Speight v. Wheeler*, 310 So. 2d 716, 719 (Miss. 1974) (heirs of decedent precluding from attacking legitimacy); *Johnson v. Johnson*, 395 So. 2d 640, 641 (Fla. Dist. Ct. App. 1981) (relitigation of paternity issue resolved in divorce proceedings would be "chaotic" and to require children and former wives to submit to blood tests would be humiliating).

certiorari), confirmed that beneficiaries of trust property may not seek to defeat established paternity determinations in order to increase their proportionate share of trusts assets. *In re Trust Created by Agreement Dated Dec. 20, 1961*, 765 A.2d 746, 758-59 (N.J.), *cert. denied*, 534 U.S. 889 (2001). The New Jersey decision, citing *Michael H.*, rejected the argument that such a rule of law violates the beneficiaries' due process, and noted that the alleged protected interest (a purported economic right to become eligible for an unspecified share of trust proceeds) occupies a lower place in the hierarchy of rights when compared to the putative father's right to a parent-child relationship at issue in *Michael H. In re Trust Created by Agreement Dated Dec. 20, 1961*, 765 A.2d at 758-59. Petitioners have offered no compelling reasons why a contrary result should be reached here even if the issue had been properly raised below.

## CONCLUSION

For the foregoing reasons, Respondents respectfully urge the Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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(3)

SEP 10 2004

No. 04-97

IN THE

# Supreme Court of the United States

WILLIAM J. BERENS and PHILLIP H. MARTIN, Trustees,

*Petitioners,*

*v.*

CWM and ACM, by PAM, and DHM,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA COURT OF APPEALS

## REPLY TO BRIEF IN OPPOSITION

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## REPLY TO BRIEF IN OPPOSITION

By admission or omission, the Claimants' Brief in Opposition has confirmed the essential facts that make this case worthy of this Court's review: The petitioner Trustees have a traditionally protected legal interest in the property of the Trusts, directly tied to their fiduciary duty to distribute that property only to beneficiaries meeting the irrevocable and unamendable terms of the Trusts.[1] The terms of the Trusts have been construed to require actual, biological descent, and the Claimants have stipulated, for purposes of these proceedings, that they are not in fact of that descent. Nonetheless, the decision of the Minnesota Court of Appeals, which the Minnesota Supreme Court refused to review, prevents the Trustees from distributing that Trust property according to the Trusts' terms by holding the Trustees bound to prior parentage "adjudications" in which the Trustees did not and could not have participated.

Deprivation of property without an opportunity to be heard is a fundamental due process violation, and it is worthy of this Court's attention in this circumstance because it is taking place repeatedly in multiple states, with the likelihood that it will continue and increase, based in substantial part on the misapprehension that this Court has blessed this deprivation in its *Michael H.* decision when in fact it has not.

Nothing said in the Brief in Opposition changes any of the facts above. Those facts call for this Court's review.

### I. This Court Has Jurisdiction.

The Court has long recognized that "[o]ur jurisdiction does not depend on citation to book and verse." *Eddings v. Oklahoma*, 455 U.S. 104, 113-14 n.9 (1982). What matters is whether the basis for the claim of federal right has been brought to the state

1. Claimants do not challenge either the legal interest the Trustees hold or their fiduciary duty concerning the same. Rather, they claim, incorrectly, that the Trustees have no state law standing to protect that interest. That claim is demonstrably inaccurate, as shown *infra*.

court's attention, and "if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented." *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928).

As this Court has often noted, "the fundamental requisite of due process of law is the opportunity to be heard," *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)). "[T]here can be no doubt that at a minimum they [the terms of the Due Process Clause] require that deprivation of . . . property by adjudication be preceded by . . . opportunity for hearing appropriate to the nature of the case." *Id.* at 313. Here, the due process issues raised by the Questions Presented were within the clear intendment of the Trustees' contention, raised and repeated throughout the proceedings below,[2] that the results of "parentage" proceedings could not be used to govern their disposition of trust property legally owned by them where they did not and could not have had an opportunity to be heard in those parentage proceedings. *Cf. Braniff Airways v. Nebraska State Board*, 347 U.S. 590, 599 (1954).[3] That "clear intendment"

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2. *See* Pet. at 6-8 & nn.6, 8-9 (citing and quoting record).

3. In *Braniff Airways*, this Court disposed of a complaint similar to that of Claimants here that a due process issue had not been sufficiently raised below:

> [T]he bare question whether an instrumentality of commerce has tax situs in a state for the purpose of subjection to a property tax is one of due process. However, appellant timely raised and preserved its contention that its property was not taxable because such property had attained no taxable situs in Nebraska. Though inexplicit, we consider the due process issue within the clear intendment of such contention and hold such issue sufficiently presented.

(Cont'd)

was made explicit to the Minnesota Court of Appeals in the beneficiaries' brief to that court,[4] and was also explicit in the Trustees' Petition for Review to the Minnesota Supreme Court, where they made clear that the Minnesota Court of Appeals' application of the parentage adjudications to the Trustees' property was "a violation of due process," citing cases in which the Minnesota Supreme Court had previously recognized that the right the Trustees claimed was fundamental and federally guaranteed. *See* Pet. at 7-8 & nn.8-9.[5]

Moreover, there is no doubt that Claimants clearly understood below that federally guaranteed due process concerns were at issue throughout the proceedings. They did *not* contend, in either their appeal to the Minnesota Court of Appeals or in their opposition to review by the Minnesota Supreme Court, that due process concerns had not been properly raised.[6] Rather,

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(Cont'd)

See *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67, and cases cited.

347 U.S. at 599 (footnote omitted).

4. *See* Pet. at 6 n.6 (citing, inter alia, the Brief of Respondent Beneficiaries AMP, DDM, JM, DCM, KMR, and SMK to the Minnesota Court of Appeals). Beneficiaries AMP, DDM, JM, DCM, KMR, and SMK are petitioners in this Court in No. 04-152, currently pending along with this Petition.

5. As pointed out in the Petition to this Court in No. 04-152, Beneficiaries AMP, DDM, JM, DCM, KMR, and SMK also explicitly pressed a due process claim in their petition for review to the Minnesota Supreme Court. *See* Pet. in No. 04-152 at 6 n.10.

6. Claimants also did not complain below that the Trustees had not notified the state attorney general of a constitutional challenge to the Minnesota Parentage Act. Presumably that is because Claimants recognized that the due process challenge here is not to the Act, but to the subsequent use of a prior "adjudication" under the Act to cut off

(Cont'd)

they responded to those concerns by arguing (inaccurately) on the merits that this Court's decision in *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), had already established that there was no due process violation. *See* Pet. at 8, 17.

Finally, it is clear that this Court's jurisdiction is not defeated simply because a state court refused to consider or failed to articulate its denial of a claim based on a federal right. *See, e.g.*, *Chambers v. Mississippi*, 410 U.S. 284, 290 n.3 (1973). Federal due process claims were pressed below, and this Court has jurisdiction to entertain the Questions Presented.

## II. The Trustees Have Standing To Assert The Questions Presented.

The due process questions are squarely presented by this case, and Claimants' supposed state law issues are, in fact, not issues at all.[7]

Claimants are not correct in asserting that the Trustees have no standing to appeal from the court of appeals judgment and are not aggrieved parties under Minnesota law. Minnesota Statutes Section 501B.21 (2002) provides: "An appeal from the order [pursuant to a Section 501B.16 petition] may be taken by *any* party . . . ." (emphasis added), and arguments such as those made by Claimants have been rejected by the Minnesota courts:

> Respondents . . . contend that [an entity nominated as a trustee and personal representative] cannot

(Cont'd)
third-party property rights when there was no opportunity in that prior "adjudication" for those third parties to be heard, which is what the Minnesota Court of Appeals did here.

7. As with their arguments in the preceding section, none of these supposedly state-law based arguments regarding standing were made by Claimants to the state courts below.

> appeal because it is not an aggrieved party since it does not have a beneficial interest in the estate. This argument is . . . meritless. A financial stake in the litigation is not necessary in order to be an aggrieved party . . . . To hold otherwise would mean that . . . trustees do not have standing to challenge orders which are in derogation of their fiduciary responsibilities.

*In re Estate of Schroeder*, 441 N.W.2d 527, 530 (Minn. App. 1989). *See also In re Bretzman's Will*, 135 N.W. 980, 982 (Minn. 1912) ("'A party is held aggrieved whose rights are necessarily affected by the decree. And this is equally true, whether the rights to be affected are those which the party has in a personal or representative capacity.'") (quoting *Smith v. Sherman*, 58 Mass. (4 Cush.) 408, 411 (1849)). Furthermore, *In re Trust Created by Hill on Dec. 31, 1917*, 499 N.W.2d 475 (Minn. App. 1993), the Minnesota case cited by Claimants in their Brief in Opposition on these points (Br. in Opp. at 11), did not hold that a trustee may not be an aggrieved party. Rather, that case held that an entity that was not a trustee or even a valid successor trustee did not have standing to appeal the judgment. *See* 499 N.W.2d at 487.

*Toledo Trust Co. v. Farmer*, 135 N.E.2d 356 (Ohio 1956), which Claimants also cite, is indeed telling, but not for the argument Claimants urge. While the court in that case did hold that a trustee generally is not an aggrieved party if the trustee has no duty to perform other than paying out funds to beneficiaries pursuant to a court order,[8] it went on to note that

8. The holdings of the cases from other jurisdictions cited by the Claimants are similar. *See First Nat'l Bank of Dewitt v. Yancey*, 826 S.W.2d 287, 288-89 (Ark. App. 1991) (reciting general rule in holding that trustee was not an aggrieved party and could not appeal lower court order determining amount of income to which beneficiary was entitled); *In re Trust Under Agreement of David H. Keiser, Dated Dec. 23, 1925*, (Cont'd)

"a different rule governs where a judgment prevents the trustee from discharging his duties under the trust." 135 N.E.2d at 361.

> Where the order or judgment . . . prevents the trustee from discharging his duties under the trust, or threatens to defeat the purpose of the trust, or depletes the trust fund by allowance of unreasonable or unfounded claims against it, the trustee, though having no personal interest in the litigation, is not a disinterested party. In such case, he, in his fiduciary or representative capacity, is aggrieved by the judgment or order, and may appeal therefrom, whether the litigation is between the beneficiaries themselves or between the trust and third parties.

*Id.* (quotation and citations omitted). Here, the Trustees brought their initial petition to determine the proper discharge of their duty as trustees to uphold the settlors' intent regarding the identification of trust beneficiaries. *See* Pet. at 4-5 & n.5; *id.* at 11-12. The court of appeals' decision prevents the Trustees from discharging that duty, on the basis of prior "adjudications" in which the Trustees did not and could not participate.[9]

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(Cont'd)
572 A.2d 734, 735-37 (Pa. Super. 1990) (trustee was not an aggrieved party and could not reopen adjudication of amounts distributed when distributions had been made pursuant to an order of the court).

9. Claimants acknowledge that the court of appeals did not base its decision on the merits of the district court's construction of the Trusts' language, thus leaving the construction in that sense "undisturbed" and instead deciding the case solely on the basis of the preclusive effect of the prior "adjudications" under Florida and Minnesota law, in which all parties admit the Trustees had no right to participate. What that means is that this Court is not being asked to review any Minnesota state law trust construction issue; the due process issues raised are both squarely presented and the only questions on which this Court is being asked to pass.

Claimants' arguments regarding the constitutionally protected interest of the Trustees are similarly flawed. Claimants apparently argue that even though the Trustees hold legal title to the property, they do not have any due process rights with respect to that property because the beneficial interest is held by the beneficiaries of the Trusts, who may assert causes of action regarding the same. *See* Br. in Opp. at 11-12. This argument is misleading; the Trustees did not bring an action to enforce a particular beneficiary's beneficial interest. Their action was not one to determine rights as between beneficiaries or classes of beneficiaries, but rather to determine the *identity* of beneficiaries, consistent with the settlors' intent. As between the property of the trust and those who may be nonbeneficiaries, a trustee is not merely a disinterested stakeholder: a trustee cannot administer a trust for the benefit of persons not intended to be beneficiaries thereof, as Minnesota has long held. *See, e.g.*, *In re Campell's Trusts*, 258 N.W.2d 856, 860-863 (Minn. 1977). The Claimants' argument that the Trustees do not have a recognized, protected interest in the Trusts' property thus merely begs the merits of the Trustees' action.

**III. The Questions Presented Are Important.**

That neither the Minnesota Court of Appeals nor the Minnesota Supreme Court openly discussed the fundamental due process principles violated by the decision below does not detract from the reasons to grant review here; rather, it highlights them. It shows that the misapplication of this Court's decision in *Michael H.*, and this Court's denial of certiorari in *In re Trust Created by Agreement Dated Dec. 20, 1961* ("*In re Johnson Trust*"), 765 A.2d 746 (N.J.), *cert. denied*, 534 U.S. 889 (2001), are leading lower courts to consider the due process issues as matters already decided and unworthy of further consideration, as Claimants urged below. *Cf.* Pet. at 17 (quoting Claimants' brief in opposition to review by the Minnesota Supreme Court). That is clearly not correct, as demonstrated in the Petition

(Pet. at 17-20),[10] but it is perceived as such by lower courts, as this case (and the *In re Johnson Trust* case from New Jersey) proves.

That misperception is important, and has nationwide consequences on long-settled expectations.[11] Trust property once irrevocably and unamendably given to trustees cannot be taken back, nor can the terms of its disposition be changed. Due process most fundamentally means that property dispositions may not be adjudicated without the owner having an opportunity to be heard. But the result of the misperception of *Michael H.* is that the policy-based determinations of "parentage" proceedings — where there is no right for trustees of trust property to be heard about that property — are being used to thwart the expectations of trust settlors who have already left property for disposition to their actual blood relations. And because it is a plurality decision of this Court that is being misperceived as sanctioning such decisions despite due process principles, only this Court can correct the problem.

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10. Claimants simply fail to acknowledge that *Michael H.* did not purport to deal with protected property interests of third parties, and that five Justices concluded there would be a procedural due process problem with a conclusive presumption that purported to terminate a constitutionally protected interest without any hearing whatsoever. *See* Pet. at 19-20, quoting 491 U.S. at 136 (Brennan, J., dissenting) (citing opinions of other Justices). It was only because Justice Stevens concluded that the petitioner in that case had been afforded an opportunity to be heard that he concurred in the plurality decision. *See id.* at 132-136 (Stevens, J., concurring in the judgment); *see also* Pet. at 18 n.15.

11. As the Petition notes, nineteen states have versions of Uniform Parentage Acts, and all states provide for the enforcement of divorce decree child support obligations. *See* Pet. at 21 & n.16. While Claimants cite a litany of cases in footnote 13 of their Brief in Opposition, only one — the *In re Johnson Trust* decision noted above — deals with due process concerns.

## IV. This Case Is The Appropriate Vehicle To Bring These Important Questions Before The Court.

This case allows the Court to explore the due process concerns at issue with all the relevant parties — trustees, acknowledged trust beneficiaries, and claimants asserting beneficiary status as a result of "parentage adjudications" — present and separately represented. It assures the Court that the important questions and fundamental principles at stake will be well-aired before it, by parties with very substantial stakes in the outcome.[12]

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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12. As noted in the Petition, the Trusts at issue have a collective value of over $900 million. Pet. at 4 n.4.